

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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In the Matter of O.T.

24-CV-6930(CBA)

ZUHTU ONUR TATARI,

Petitioner,

United States Courthouse  
Brooklyn, New York

-against-

NEVA DURUST,

December 11, 2024  
9:30 a.m.

Respondent.

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TRANSCRIPT OF CIVIL CAUSE FOR HEARING  
BEFORE THE HONORABLE CAROL BAGLEY AMON  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

For the Petitioner: GREEN KAMINER MIN & ROCKMORE LLP  
420 Lexington Avenue, Suite 2821  
New York, New York 10170  
BY: RICHARD MIN, ESQ.  
GIGI VARGHESE, ESQ.

For the Respondent: BLANK ROME LLP  
1271 Avenue of the Americas  
New York, New York 10020  
BY: BRETT S. WARD, ESQ.  
ALEXA B. LUTCHEN, ESQ.  
PAUL H. TZUR, ESQ.  
ANDREW T. HAMBELTON, ESQ.  
MARILYN B. CHINITZ, ESQ.

REPORTED BY:

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Computer-Aided Transcription.

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1 (In open court.)

2 THE COURTROOM DEPUTY: Good morning. This is  
3 Civil Cause For a Civil Hearing, 21-CV-06930, *Tatari v.*  
4 *Durust*.

5 Would the parties please state your name for the  
6 record, starting with the plaintiff.

7 MR. MIN: Richard Min, Green Kaminer Min &  
8 Rockmore, on behalf of petitioner Onur Tatari.

9 Good morning, Your Honor.

10 THE COURT: Good morning.

11 MS. VARGHESE: Gigi Varghese, Green Kaminer Min &  
12 Rockmore, for petitioner.

13 Good morning, Your Honor.

14 MR. MIN: Your Honor, Ms. Varghese is not admitted  
15 into this court, she's just assisting with the trial. We  
16 also have a paralegal from our office, Caroline Shephard,  
17 who will be assisting with document management.

18 THE COURT: When you say "assisting with the  
19 trial," you're not talking about questioning witnesses or  
20 anything like that.

21 MR. MIN: No, I'm not, Your Honor.

22 THE COURT: Okay, good.

23 MR. MIN: Our client is also here in the back, and  
24 he's ready to sit at the table.

25 THE COURT: He can sit at the table now if he

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1 wishes.

2 MR. MIN: Thank you.

3 MR. WARD: Blank Rome by Brett S. Ward, Alexa  
4 Lutchen, Paul Tzur, Andrew Hambelton, and Marilyn Chinitz,  
5 1271 Avenue of the Americas, New York, New York 10020,  
6 appearing today on behalf of the respondent, who is in the  
7 back also, Your Honor.

8 Good morning.

9 THE COURT: Good morning. Everyone can be seated.  
10 Are we prepared to proceed with the petitioner's  
11 case? Mr. Min, do you have a witness here?

12 MR. WARD: Your Honor, may I be heard very briefly  
13 on some issues?

14 THE COURT: Yes.

15 MR. WARD: Your Honor, there is an issue that has  
16 arisen overnight that has a direct bearing on this case.  
17 I'm not going to get into the why we are presenting this  
18 information, the failures of discovery production to us of  
19 this material and why we discovered it and how. But we have  
20 learned that in July of this year, petitioner made an  
21 application to the Family Court of Turkey to prevent my  
22 client from traveling abroad; everything they seek to have  
23 this Court rule here. The Turkish Family Court on July 12th  
24 ruled that my client had the right to travel -- excuse me,  
25 the right of custody, which means it was in her discretion

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1 to travel as she saw fit. That is the exact issue before  
2 this Court. We have the decision here. Unfortunately it is  
3 still in Turkish. We are in the process of translating it.  
4 We got it into our hands at about 11:30 p.m. last night.

5 I've spoken to Mr. Min this morning, I presented  
6 him with the documents, and he agrees it says what I just  
7 said, that she -- that the Turkish courts denied the  
8 arguments presented by his client to this Court and found  
9 that she had the right of custody, the very position they're  
10 taking contrary in this matter.

11 This is the Rule 15 -- excuse me, the Part 15  
12 decision you were looking for. They have made a  
13 determination of the very issue before this Court. As a  
14 result, we ask that this case be dismissed based on the  
15 finding of the Turkish Family Court on this determinative  
16 issue before this Court.

17 THE COURT: Who made the application to the Court?

18 MR. WARD: The petitioner made an application to  
19 the Turkish Family Court.

20 THE COURT: Okay.

21 MR. WARD: Seeking to prevent my client from  
22 traveling overseas. This was related -- you've heard a  
23 little bit in the papers about a passport issue. My client  
24 was trying to get a passport. While that litigation was  
25 going on, he went to the Turkish Family Court and said

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1 please stop her from traveling. The Turkish court said no,  
2 she has the right of custody here, and that right of custody  
3 comes with the -- I'm paraphrasing a little bit -- comes  
4 with the right to travel, and they denied his application.  
5 That is the very thing they're asking you to rule on here.

6 THE COURT: Why is it that you're only learning  
7 this as of today?

8 MR. WARD: There's two reasons.

9 One, we asked for all of the petitions that he  
10 filed in Turkey. We were given, I don't know, maybe a dozen  
11 petitions. This wasn't produced to us. This petition where  
12 he made this --

13 THE COURT: Well, in Turkey, doesn't the other  
14 side get notice of orders?

15 MR. WARD: That was my second point. We had  
16 requested from the attorney who is here today in court,  
17 through an intermediary, we were working through an  
18 intermediary to get all discovery. What I'm told is he sent  
19 it to the intermediary. The intermediary couldn't open it.  
20 It was his understanding we had it. It was only, because he  
21 is one of our witnesses, when we were meeting with him  
22 yesterday about his testimony, did we say, nothing happened  
23 with this? He said, what do you mean? There is decision.  
24 In fact, we learned about eight months earlier he made a  
25 different application to prevent her from traveling, which

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1 the Turkish Family Court denied, but it didn't say because  
2 of her custody rights. So it's obviously very helpful, but  
3 not the same exact thing. And so when we went to him, he  
4 then searched his files last night, sent it to us, and we  
5 received it at about 11:30.

6 First thing this morning I called Mr. Min, got him  
7 this information. He and I discussed this. He doesn't  
8 deny, because he has Turkish-speaking people here,  
9 witnesses, and we also have an interpreter here, he does not  
10 deny that this is what it says.

11 THE COURT: Mr. Min, why isn't this dispositive?

12 MR. MIN: Your Honor, I contest some of Mr. Ward's  
13 representations. I told Mr. Ward that I would like to see  
14 an actual translation. We do have interpreters. I received  
15 this, I'd say, about seven minutes before we commenced this  
16 morning, Your Honor, so about 9:23-ish. So I've had maybe  
17 all of four minutes to speak to my client and to my Turkish  
18 expert about this order.

19 Your Honor, I can't answer that question at this  
20 moment because, honestly, this is the first time I'm laying  
21 eyes on this document. Mr. Ward explained why he had not  
22 had it previously. We had not had it previously either.

23 I do know that this is a proceeding, a passport  
24 proceeding that the respondent mother had commenced. It's  
25 not in the change of custody proceeding. My understanding

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1 is that there are some inconsistencies and errors in this  
2 order. Again, I can't verify that because it's not in  
3 English, but apparently the judge in here said, well,  
4 there's no change of custody case pending, which at this  
5 moment in time there was a change of custody case pending  
6 that was an issue for my client. This is a temporary order,  
7 from what I understand, not a final order. That case is  
8 still pending in the Turkish courts.

9 For all those reasons, this may not be dispositive  
10 at all. But --

11 THE COURT: Well, I don't want to go through two  
12 days of testimony if this is dispositive.

13 MR. MIN: Your Honor, I understand. What I talked  
14 to Mr. Ward about prior to commencing today is, you know,  
15 what is Mr. Ward seeking. From my own due diligence and  
16 obviously on behalf of my client, I can't simply accept the  
17 Turkish document we just received. I will need some time to  
18 talk to either the interpreter we have here, the translator  
19 we have here that's an expert, talk to my client, talk to  
20 counsel in Turkey. So if Mr. Ward's seeking some sort of,  
21 you know, time to do all that, then I certainly would  
22 consent to that. I don't want to waste the Court's time, I  
23 don't want to waste counsel's time, and be somewhat  
24 productive about this.

25 But I can't sit here today and accept Mr. Ward's

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1 representations about the impact of this document, having  
2 just seen it.

3 THE COURT: My proposal is I give you a day to do  
4 this. We'll adjourn the hearing until tomorrow and I'll  
5 give you the opportunity. That should give you enough time  
6 to figure out what your view is about what the document  
7 says, et cetera. So I think that would give you enough  
8 time.

9 But it seems like this could likely be  
10 dispositive, and there's no sense wasting the Court's time  
11 and the attorneys' time and generating more fees for  
12 everyone.

13 MR. WARD: Your Honor, I have no objection to  
14 Mr. Min having some time. Would it be more advisable just  
15 to take the morning or to give up the whole day?

16 THE COURT: Well, how long will it take you to  
17 resolve it, do you think?

18 MR. MIN: I don't know, since we haven't tried to  
19 reach out to Turkish counsel that's in Turkey. I mean, I  
20 would prefer the day just because we'd like to go back to  
21 the office and have some sort of space to work out of. I  
22 don't want to commit to coming back this afternoon if that's  
23 not feasible.

24 Perhaps we can give an update to the Court in a  
25 couple hours?



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1 THE COURT: Well, why don't we call the case at  
2 2:00 and you can tell me if you've been able to resolve it  
3 or if you need more time.

4 MR. MIN: Sure. That's fine, Your Honor.

5 MR. WARD: And upon receipt of the -- we're  
6 working on a translation as we speak, an official  
7 translation. We will forward same to the Court so the Court  
8 can have these documents.

9 THE COURT: Yes. But I would understand if at  
10 2:00 counsel hasn't been able to resolve this. I mean, this  
11 is a sort of last minute thing.

12 MR. WARD: Sure.

13 THE COURT: But we'll get a status update at 2:00.  
14 Okay?

15 MR. WARD: Thank you, Your Honor.

16 MR. MIN: Thank you, Your Honor.

17 THE COURT: All right. Thank you.

18 (Court is in recess.)

19 THE COURT: Good afternoon. This is a re-call for  
20 the Civil Cause for a Hearing, 24-CV-06930, *Tatari v.*  
21 *Durust*.

22 Will the parties please state your name for the  
23 record, starting with the plaintiff.

24 MR. MIN: Richard Min, Green Kaminer Min &  
25 Rockmore, on behalf of petitioner Onur Tatari. Next to me

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1 is Gigi Varghese from the same firm, and next to her is  
2 Mr. Tatari.

3 Good afternoon, Your Honor.

4 THE COURT: Good afternoon.

5 MR. WARD: Blank Rome by Brett S. Ward, Paul Tzur,  
6 Andrew Hambelton, Alexa Lutchen, Marilyn Chinitz, appearing  
7 today on behalf of the respondent, who is here in court with  
8 us.

9 Good afternoon, Your Honor.

10 THE COURT: Good afternoon. Everyone can be  
11 seated.

12 Mr. Min, have you had the opportunity to look over  
13 the document?

14 MR. MIN: Yes, Your Honor. We've spoken, had  
15 conversations about it. We received a couple of  
16 translations. I believe two of the three documents we  
17 received translations from --

18 THE COURT: I thought it was just one.

19 MR. MIN: I think they submitted only one to the  
20 Court, but they submitted another one to us directly of the  
21 three documents that we --

22 THE COURT: I thought there was just one.

23 MR. MIN: So there were three documents sent to us  
24 this morning. One was the judgment that was discussed; one  
25 was the application that led to that judgment; and another

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1 was an application in a different case with a preliminary  
2 order from January 2024.

3 What was translated was the judgment that was then  
4 sent to the Court, and also we received a translation of the  
5 application itself -- of the interim order itself from  
6 January. What we're waiting on a translation of is the  
7 claim that my client submitted that led to the judgment,  
8 which is something I'm about to address. And we are  
9 awaiting the translation from TransPerfect internally, which  
10 we've requested this morning and we should be getting today.

11 THE COURT: So you're having all three documents  
12 translated yourself?

13 MR. MIN: Yes.

14 THE COURT: And you have not had all three  
15 documents?

16 MR. WARD: So, Your Honor, we have received first  
17 the document we sent to the Court, which is, to us, the  
18 operative document.

19 THE COURT: The order.

20 MR. WARD: The order. There is an earlier order I  
21 referenced this morning from February, and the petition for  
22 that is actually an exhibit, where the petitioner had  
23 previously asked the Court to prevent our client from  
24 traveling. We have the February order that denied that  
25 injunction. We received that, you know, very shortly before

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1 we left for court, so we got it over to Mr. Min right away  
2 so he could see it.

3 THE COURT: Wait a minute. Is that what you're  
4 talking -- I'm confused.

5 MR. WARD: Okay.

6 THE COURT: What is it that you just provided  
7 today to Mr. Min?

8 MR. WARD: Just now. Not what we gave to the  
9 Court --

10 THE COURT: No, today. When you came in this  
11 morning, you said you had new documents. What were those?

12 MR. WARD: We gave three Turkish language  
13 documents. One was a February 2024 order from the Turkish  
14 Family Court denying petitioner's request to prevent the  
15 respondent from traveling with the child. On their change  
16 of custody motion, it also denies his request for a change  
17 of custody. That is the first document.

18 The second document we provided to Mr. Min is his  
19 client's petition to the Turkish Family Court on July 10th  
20 seeking, amongst other things, an order from the Turkish  
21 Family Court to notify the authorities to help prevent my  
22 client from traveling with the child because he did not  
23 consent. That we have not received, but we may receive it  
24 any moment. We have not received the translation.

25 The third document we provided, which the Court

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1 now has the English translation, is the order on that  
2 application denying the request, stating that the mother has  
3 custody of the child and she has the right to travel abroad  
4 with the child, has a right as a result of those custody  
5 rights.

6 Those are the three documents.

7 THE COURT: Now, that 2/24 order that you made  
8 reference to.

9 MR. WARD: Yes.

10 THE COURT: That had never previously surfaced in  
11 this case?

12 MR. WARD: That had not previously surfaced. We  
13 had the petition, which sought the relief.

14 THE COURT: So it's not just one order that's new,  
15 it's two orders that are new from that, because this morning  
16 I understood it just to be the one order. Now you're saying  
17 that there are two orders from the Turkish court that had  
18 not previously been made a part of the record here.

19 MR. WARD: Yes, that have not been previously made  
20 part of the record or disclosed by the person in this case  
21 who made the applications to the Turkish court, knew the  
22 results of those applications, and then came to this court  
23 and made representations in a Hague petition contrary to  
24 what he knew the Turkish Court's rulings were. That's the  
25 problem here, Your Honor.

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1 And when we asked for all of the petition  
2 necessary that case, we got all of the petitions except the  
3 one petition that would have put us on notice that there was  
4 a decision in which the Turkish Family Court specifically  
5 ruled on the very issue that is before this court.

6 THE COURT: But you indicated this morning that  
7 your client would have gotten copies of this order, her  
8 lawyer knew about these orders and just didn't send them to  
9 you, correct?

10 MR. WARD: That is -- that is not exactly true.

11 THE COURT: Okay. Is that what you said this  
12 morning?

13 MR. WARD: What I said is that those documents, as  
14 I understand it, were sent along with other documents to a  
15 person who was helping us get translations and then sending  
16 it to us, that those documents were in a format that weren't  
17 opened, and instead of the communication saying send us new  
18 ones, it was just dropped because we were dealing with  
19 hundreds of pages of documents. So no one on our side made  
20 an effort to conceal this. Trust me, Your Honor, I would  
21 have --

22 THE COURT: I'm not saying you made an effort to  
23 conceal anything. I'm just saying that your client should  
24 presumably have been aware of these orders prior to now.  
25 You would have thought this would have come up before the

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1 day that we're having the hearing, and it seems to me that  
2 the petitioner should have had them and made them available  
3 too.

4 So what are we doing here, fellas?

5 MR. WARD: Well, Your Honor, the timing is  
6 unfortunate, but the order --

7 THE COURT: To say the least.

8 MR. WARD: The order says what it says. The fact  
9 is that I know there was argument this morning that this is  
10 an interim decision. It is not the decision that matters.  
11 It's the reasoning of the Court within the decision, is  
12 exactly the Article 15 request made. And I want to note  
13 that the position taken by the petitioner is you can't ask  
14 me to file a petition asking the Court to rule on this  
15 issue, they'll never do that. That's what happened here.  
16 He went to the Court, and in two days the Court gave him a  
17 decision. He said, I have custody, under the divorce decree  
18 I have the right to consent, she wants to leave, stop her  
19 from leaving because she doesn't have my consent. And in  
20 two days, the Turkish Family Court said, no, sir, she has  
21 custody rights and those custody rights are absolute in the  
22 right for her to travel.

23 I don't know how we can now have a trial where  
24 they can put on witnesses to say, no, Judge, because their  
25 experts with respect to Turkish law are going to argue to

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1 you, because that's what's in their report, they had joint  
2 custody. This order specifically says they do not. They're  
3 going to tell you this Turkish divorce document, Your Honor,  
4 means that they have the right to consent. There is order  
5 from the Turkish court saying, no, you don't have the right  
6 to consent.

7 This document, again, as unfortunate as it is that  
8 I'm pushing this on to the Court at this time, and I  
9 apologize for this, and determinative of the issue before  
10 this court. I don't know what witnesses they can put on now  
11 in good faith to say that the Turkish law would go their way.  
12 It didn't.

13 THE COURT: Apart from this document, just on the  
14 Article 15 issue, counsel put in a statement from his expert  
15 that the court, the Turkish courts do not accept Article 15  
16 petitions. You haven't responded to that.

17 MR. WARD: I received it at 8:30 at night. You  
18 know, a lot of this is coming --

19 THE COURT: Yes.

20 MR. WARD: What my response would have been -- and  
21 I was going to ask this morning if Your Honor wanted us to  
22 put a formal response in or if Your Honor wanted us to just  
23 deal with it on cross-examination -- the reasoning of that  
24 expert was this is a civil law country. Civil law countries  
25 only allow things pursuant to statute. Italy is a civil law



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1 country. Mexico is a civil law country. There are  
2 published decisions where both of those countries responded  
3 to requests under the Hague Convention.

4 THE COURT: I think Turkey responded to what they  
5 would prevent under the Hague Convention and specifically  
6 said they would prevent an Article 15 proceeding.

7 MR. WARD: That's what I believe. They signed on  
8 to the treaty.

9 What I want to say is, again, what your order  
10 indicated is you were going to ask the petitioner to please  
11 go to the Court and ask the Court, you know, all he has --

12 THE COURT: I know your position now is they did  
13 that and they got their answer. That's your position now.

14 MR. WARD: That's my position. But I'm saying  
15 they did it once. If Your Honor feels they should do it  
16 again, that's fine, but I don't know why we would. I don't  
17 see the Turkish Family Court going against -- again, it's  
18 not what the decision is. I don't care if the Court said  
19 you have the right -- you don't -- she has custodial rights  
20 and she could leave if she wants, but I'd like you to stay  
21 here for next week because we're going to be holding a  
22 trial. The decision doesn't matter. It's the reasoning  
23 behind the decision which goes to the very heart of what  
24 Your Honor will have to decide.

25 This is a very easy case. If you decide my client

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1 has custody and the rights to travel, then this petition has  
2 to be dismissed. If you decide that the father had joint  
3 custody, then he has custodial rights and she goes back.  
4 This is black and white as it is.

5 But now we have a decision from the Turkish Family  
6 Court saying she is the sole custodian and had the right to  
7 travel and his argument about consent is rejected. I don't  
8 know what's left for this Court to try.

9 MR. MIN: Your Honor, if I may respond.

10 THE COURT: Yes.

11 MR. MIN: Your Honor, I just noticed there is a  
12 microphone. Does Your Honor prefer that we come to the  
13 front podium or --

14 THE COURT: No, you can -- actually, you can be  
15 seated if you want, because you have to be seated to really  
16 be heard when you speak into the microphone.

17 MR. MIN: Okay. Thank you, Your Honor.

18 Your Honor, I think Mr. Ward's statements have  
19 really crystallized the misunderstanding, and I don't  
20 believe by any means purposefully, but the  
21 misrepresentations of this order to this Court.

22 Mr. Ward has used the word "travel" nonstop in his  
23 arguments. This is not a case about traveling abroad. This  
24 is a case about relocation abroad, about setting up a new  
25 residence abroad. The translation that Mr. Ward has not

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1 provided is a translation of my client's claim and  
2 application to this Court, which was to prevent her from  
3 leaving and traveling outside Turkey. That was what was  
4 rejected. A broad request of leaving Turkey in general for  
5 a one-day trip, a week trip, for any purpose, and the Court  
6 said no, she has sole custody, you can't do that. It didn't  
7 answer the question of whether she could set up a new  
8 residence abroad, establish a new school abroad, you know,  
9 make decisions on healthcare abroad. None of those  
10 questions were answered by this decision.

11 So when Mr. Ward says, oh, why would this Court  
12 ask the same question again, it's not the same question. If  
13 the question was is she allowed to travel outside of Turkey,  
14 we'll concede, yes, she does. If the question is, is she  
15 allowed to relocate outside of Turkey, that question has not  
16 been answered by any court.

17 Now, the other decision that Mr. Ward references  
18 is essentially just like this one, a TRO request, a  
19 preliminary injunction request. Those were denied, because  
20 those are the subject of the main proceedings, the change of  
21 custody. Yes, we concede he has not obtained a TRO or  
22 preliminary injunction to stop her from traveling or from  
23 leaving Turkey. But again, these are not the operative  
24 questions that this Court has to answer.

25 It's the same issue in their expert reports, Your

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1 Honor. Their experts focus on her right to travel, but they  
2 don't address the right to relocate. That is not the focus  
3 of their report. And it conflates those two issues, and  
4 that's what our experts have focused on and talked about,  
5 because in Turkey, joint custody is a thing; it's a right.  
6 It's new, but it exists. And it especially exists when  
7 parties agree pursuant to a divorce protocol, which they did  
8 in this case.

9 Now, at the end of the day --

10 THE COURT: So you're not really disputing what  
11 this order says.

12 MR. MIN: No.

13 THE COURT: Okay.

14 MR. MIN: We're getting our own translation. We  
15 have some nitpicks, but the substance of it we're not  
16 disputing.

17 The claim and the application that my client made  
18 made no reference to 3.7, made no reference to relocation,  
19 made no reference to the divorce decree in terms of why he  
20 wants to stop her, right? And so it's informative and  
21 instructive about what he was really seeking, and that's why  
22 it's important for this Court to see the context and the  
23 full picture of what was going on in the Turkish  
24 proceedings.

25 And as I alluded to before, even if Mr. Ward is

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1 right that there's this acknowledgement that she can travel,  
2 as I said before, the 3.4 and 3.8, which regard health  
3 decisions and schooling decisions, are not addressed in this  
4 order. The advocates from the U.S. Supreme Court made it  
5 clear simply one right of custody has to be violated for  
6 there to be a wrongful removal; one right.

7 Included in Article 5 of the Hague Convention is  
8 the right to determine the child's place of residence. It  
9 is not the only right of custody that can be violated. It  
10 includes that, and there's an emphasis on that. But their  
11 right to determine schooling together, and all the schools  
12 on that list were in Turkey, in 3.4, their right to make  
13 health decisions together, those are not a bridge. Those  
14 have been violated against my client by her decision to  
15 unilaterally choose a school in New York.

16 So there are live issues here.

17 THE COURT: What authority do you have for the  
18 fact that choosing a school or health decisions constitute  
19 custody rights?

20 MR. MIN: Well, the Article 5 of the Hague  
21 Convention says the right for the care and upbringing of the  
22 child. I might be paraphrasing here a little bit because  
23 I'm not reading Article 5.

24 THE COURT: Do you have any witnesses here? Let's  
25 just go forward. Do you have your witnesses here?

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1 MR. MIN: Your Honor, this is just to address this  
2 before, my understanding of Your Honor's direction was that  
3 come back at 2:00, discuss the order, and if we needed the  
4 full day --

5 THE COURT: And I see you let people go. But do  
6 you have anybody here ready to testify?

7 MR. MIN: I mean, I do have my client --

8 THE COURT: Well, call him.

9 MR. MIN: -- and the Turkish expert.

10 THE COURT: They know what the documents say.  
11 They're prepared to opine on it, I take it.

12 MR. MIN: Okay. So what my preference would be,  
13 then, if procedurally we can talk about this order without  
14 the formalities, because we don't have our translation and  
15 everyone sort of acknowledges that it might be subject to --  
16 I don't know if we have hard copies of those translations  
17 here.

18 MR. WARD: We do.

19 MR. MIN: We prefer to call our remote Turkish  
20 expert because I know he's not available tomorrow.

21 THE COURT: Okay. Call him.

22 MR. MIN: Your Honor, can we have, like, a  
23 ten-minute recess just to get the logistics set up?

24 THE COURT: Yes.

25 (Court is in recess.)

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1 THE COURT: We're ready to proceed. Everyone can  
2 be seated.

3 MR. TZUR: Your Honor, before we start with this  
4 witness, there's an evidentiary issue that I need to address  
5 with Your Honor about a couple of exhibits that I just found  
6 out that the petitioners may want to use with this witness.  
7 It has to do with the two translations, Exhibits 28 and 29  
8 from the petitioners that are their translations of the  
9 Turkish divorce decree.

10 THE COURT: And?

11 MR. TZUR: So the petitioners don't have any  
12 witness to come in and testify about the accuracy of the  
13 translations of that Turkish divorce decree.

14 THE COURT: You mean today they don't have  
15 someone?

16 MR. TZUR: At all, at all. They don't have a  
17 witness to testify about the accuracy of these two  
18 translations. They've disclosed two witnesses who are going  
19 to testify about translations. One is the original  
20 translator from 2023 of the divorce decree, Talat Yazici;  
21 pardon the pronunciation. That's the person who gave the  
22 original translation who then --

23 THE COURT: Who changed his mind, yes.

24 MR. TZUR: Right. The other one is AJ Elterman.  
25 Elterman only testifies -- or the report from AJ Elterman

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1 only talks about his testimony relating to paragraph 37. It  
2 doesn't say anything else about any of the other provisions  
3 of the divorce decree. So they don't have a single witness  
4 who they've identified as an expert to come in and testify  
5 about the accuracy of these two translations.

6 THE COURT: You mean the translations in their  
7 entirety.

8 MR. TZUR: Correct.

9 MR. MIN: Your Honor, we had extensive exchange of  
10 exhibits. They've never objected on these two exhibits.  
11 The Joint Pretrial Order is clear. They never objected. If  
12 they had objected in a timely manner, perhaps we would have  
13 had witnesses called to testify.

14 But if they're not taking a position to object to  
15 them, I'm not sure why they're standing up today taking said  
16 position. It's a little disingenuous and it's a little bit  
17 late and prejudicial to us to make a late-stage objection.

18 MR. TZUR: And, Your Honor, look, this is the  
19 petitioner's case. They know their witnesses. They only  
20 gave us a final witness list and final exhibit list last  
21 night.

22 MR. MIN: Your Honor, that's not -- that's not  
23 true --

24 THE COURT: Just go ahead. We'll receive them  
25 subject to some form of connection and we can deal with this



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1 later. I'm not going to have this witness call back. If  
2 you have an objection, we can deal with it later.

3 Do you want to swear the witness in?

4 THE COURTROOM DEPUTY: Yes, Judge.

5 Sir, could you raise your right hand, please.

6 THE COURT: Can the witness hear the Court?

7 THE WITNESS: Good evening, Your Honor.

8 THE COURT: Can you hear me?

9 THE WITNESS: Yes, I can hear you, no problem.

10 THE COURT: Okay.

11 THE WITNESS: Yes, Your Honor.

12 THE COURT: Would you raise your right hand,  
13 please?

14 THE WITNESS: Yes.

15 THE COURT: Do you swear or affirm that the  
16 testimony you're about to give will be the truth, the whole  
17 truth, and nothing but the truth, so help you god?

18 THE WITNESS: Yes, I would.

19 THE COURT: Okay.

20 (Witness sworn.)

21 MR. MIN: May I inquire, Your Honor?

22 THE COURT: Yes, please do.

23 **BURAK HUYSAL,**

24 called as a witness, having been first duly  
25 sworn/affirmed, was examined and testified as

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1 follows:

2 DIRECT EXAMINATION

3 BY MR. MIN:

4 Q Can you please state your full name for the record?

5 A My name is Burak Huysal.

6 Q What is your current occupation?

7 A I'm working in Bahcesehir University in Istanbul as a  
8 professor on international private law and international  
9 family law, and I'm also the head of the Department of  
10 Private International Law.

11 Q Can you spell the name of that university, please?

12 A Bahcesehir University, Istanbul.

13 Q Could you spell it, please?

14 A B-A-H-C-E-S-H-E-R [sic].

15 Q And how long have you been a professor at that  
16 university?

17 A I'm a teaching professor since 2010 in this university.

18 Q And since 2010, have you been a professor of law and  
19 private international law at that university?

20 A Yes.

21 Q And in international family law?

22 A Yes.

23 MR. WARD: Your Honor, I just want to note that  
24 the parties have stipulated that they're not challenging the  
25 qualifications of any of the experts as expert witnesses.

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1 We're also not adopting that what the work they did was  
2 appropriate --

3 THE COURT: Are you objecting to the question  
4 being asked?

5 MR. WARD: No. I just wanted the Court to know --

6 THE COURT: I know you're not objecting to his  
7 expertise, but you're going to object to his opinion, so I  
8 think counsel's entitled to bring out his expertise.

9 MR. WARD: I'm not objecting to these questions.  
10 I just wanted to make the Court aware of the stipulations.

11 MR. MIN: We so stipulate, Your Honor.

12 Your Honor, is it helpful, perhaps, if we just  
13 agree to put in CVs?

14 THE COURT: I think it's better to just -- oh, you  
15 mean to establish his credentials?

16 MR. MIN: Yes.

17 THE COURT: Yes, can you do that.

18 MR. WARD: No objection.

19 MR. MIN: Okay.

20 We'd like to show the witness a document that's  
21 been pre-marked as Petitioner's Exhibit 45. If I can ask my  
22 colleague to bring up Exhibit 45.

23 (Exhibit published.)

24 BY MR. MIN:

25 Q Professor, can you identify this document for the

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1 Court?

2 A Yes. This is my curriculum vitae, and it shows my  
3 experiences and my workings on private international law and  
4 private international family law.

5 MR. MIN: Your Honor, we'd --

6 A And my proficiency.

7 MR. MIN: I believe based on the stipulation, we'd  
8 offer this into evidence.

9 THE COURT: All right. 45's received.

10 (Petitioner's Exhibit 45 received in evidence.)

11 Q Professor, have you published any articles or books on  
12 the topic of international family law?

13 A Yes.

14 Q Okay. Such as?

15 A Especially, my first book is on international custody  
16 law, and it was the first book that published in Turkey, and  
17 I was focused on international custody matters, especially  
18 on Hague Convention. And also I have many articles about  
19 divorce, international conflicts of laws and some other  
20 international, private international law issues.

21 Q You said you worked on a book that dealt with the Hague  
22 Convention; is that correct?

23 A Yes, yes.

24 Q What was the name of that book?

25 A Well, the first book -- that was the first book

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1 published in Turkey. The title of the book is Custody in  
2 International Law.

3 Q And when you say the Hague Convention, do you mean the  
4 1980 Hague Child Abduction Convention?

5 A Yes, yes.

6 Q What sort of topics did you write about for that book  
7 with respect to the Hague Convention?

8 A Especially I focused on the application of Hague  
9 Convention, and especially on the meaning of custody in  
10 Hague Convention terms, and the conditions for the child.  
11 And especially also I worked on habitual residence of a  
12 child, how can we decide that, and impact of this convention  
13 against other conventions of custody.

14 Q Can you briefly go through your educational background?

15 A Yes. I was --

16 THE COURT: Counsel, excuse me. That's listed on  
17 the curriculum vitae you just put in, so I don't think  
18 that's helpful.

19 MR. MIN: Okay.

20 Q Have you ever testified as an expert witness in any  
21 court in the world?

22 A Yes; in Turkey.

23 Q In Turkey?

24 A Yes, but other courts, yes.

25 Q Have you ever testified as an expert witness on the

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1 topic of international family law?

2 A Actually, as a witness, no. But as expert, yes.

3 Q What do you mean by not as a witness, but as an expert?

4 A Yes. In our law, general courts don't listen to  
5 experts in oral way. We give our reports by writing. So I  
6 make so many reports for the Courts as an expert and in  
7 general, yes.

8 Q When you write these reports for the Courts in Turkey,  
9 are you hired by one of the parties or are you appointed by  
10 the Court?

11 A No, not by the parties; by the Court. I'm appointed by  
12 the Court.

13 Q And how many times have you been appointed by the Court  
14 to present expert testimony?

15 A In family law situations, I guess about 20 times.

16 Q About 20 times. And you're talking about specifically --

17 A Yes.

18 Q -- on the topic of private international family law?

19 A Yes, private international family law and custody  
20 matters.

21 Q Okay.

22 A Custody case, yes.

23 Q Does private international family law encompass the  
24 1980 Hague Convention?

25 A Yes.

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1 Q And so what sort of topics in private international  
2 family law have you opined on in Turkish proceedings as an  
3 expert?

4 A Yes, especially on divorce matters, alimony, and  
5 custody.

6 Q The last one? And custody?

7 A Yes.

8 Q So you're familiar with the custody laws of Turkey. Is  
9 that fair?

10 A Yes, I'm familiar, especially if there's a family  
11 element in this case, and a family issue.

12 Q Were you asked to provide an opinion in this case?

13 A Can you repeat the question, please?

14 Q Were you asked to provide an opinion in this case, the  
15 one in which you're testifying today?

16 A Yes.

17 Q And what opinion were you asked to opine on?

18 A I'm asked for my opinion about the situation that the  
19 mother's removal of joint child to America, was it lawful or  
20 unlawful removal of the child, of the joint child, and if  
21 she has that -- okay.

22 Q I just didn't catch everything you said. So can you  
23 just repeat that, please, a little bit slower?

24 A Okay. Actually, my opinion asked about the question  
25 that's in this case, the mother's removal of child to

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1 America with regard to permission of father is lawful or  
2 unlawful, especially under the terms of Hague Convention.

3 Q Okay. And --

4 A And also --

5 Q Go ahead. And also what?

6 A And also the power of parties on custody, joint or  
7 sole.

8 Q Just explain that a little bit more. When you say the  
9 power of the parties on custody, joint or sole, can you  
10 explain what you mean by that?

11 A Actually, in my opinion, first I have to solve the  
12 mother has a sole power to bring the child permanently to  
13 another state without the permission of father, did she have  
14 that right or not, and I decided that she has not.

15 THE COURT: You decided what?

16 THE WITNESS: I decided that the mother has not  
17 the sole power.

18 Q So you were able to form an opinion in this case, the  
19 one in which you're testifying here today?

20 A Yes.

21 Q And your opinion was that the mother was not permitted  
22 to unilaterally relocate the child outside of Turkey. Is  
23 that a fair summarization?

24 A Yeah. According to my --

25 Q Go ahead.



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1 A Yes? Okay. According to my professional opinion in  
2 this case, according to the Hague Convention, the mother has  
3 not sole power to bring the child to another country.  
4 Especially I focused on Hague Convention, Article 5(a).  
5 This article identifies the right of custody. So in this  
6 article, the Convention defines custody rights as the right  
7 to determine the child's place of residence. So when I look  
8 to the Beykoz Family Court decision, the mother and father  
9 has a joint power to decide where children live. And so  
10 it's obvious that I can see that the mother and father has a  
11 joint power to decide if the children lives in Turkey or  
12 outside the country.

13 So in my professional opinion here, the mother's  
14 action is unlawful, according to the Hague Convention.

15 MR. WARD: Your Honor, it looks like the witness  
16 may be reading from something. Can we just clarify whether  
17 there's something he's reading from, and if so, what it is?

18 THE COURT: You can ask him on cross.

19 MR. WARD: Okay.

20 Q Are you reading from anything, Professor?

21 A You can see my hands.

22 THE COURT: No, it's your eyes we were worried  
23 about.

24 MR. WARD: I haven't heard an answer, Your Honor.

25 THE WITNESS: Sorry?

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1 THE COURT: He answered no --

2 THE WITNESS: I have an empty paper and I am  
3 writing the questions.

4 THE COURT: Okay, fine.

5 Go ahead, Mr. Min.

6 MR. MIN: I'm just trying to recall my last  
7 question, Your Honor. Give me one moment.

8 BY MR. MIN:

9 Q Professor, did you review any documentation when  
10 drafting your report?

11 A Sorry? Can you repeat the question?

12 Q Sure.

13 In formulating your opinion and drafting your  
14 report, did you review any documentation?

15 A Yes.

16 Q Okay. Such as?

17 A I reviewed especially the Beykoz Family Court's  
18 decision.

19 Q Any you formulated or you wrote an expert report  
20 stating your opinions, correct?

21 A Correct.

22 MR. MIN: Your Honor, I'd like to show the witness  
23 a document that's been pre-marked for identification as  
24 Petitioner's 44.

25 THE COURT: Okay.

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1 (Exhibit published.)

2 MR. MIN: If we can scroll down.

3 Q Just let us know, is this the expert report that you  
4 prepared in this case?

5 A Yes.

6 MR. MIN: Your Honor --

7 THE COURT: Is this 44 on your exhibit list?

8 MR. MIN: Yes, Your Honor.

9 (Pause in proceedings.)

10 MR. MIN: Your Honor, I'm happy to go either way.  
11 I don't know if it's convenient for the Court, and I don't  
12 know Mr. Ward's position, just in terms of introducing the  
13 written reports.

14 THE COURT: Since the witness is on the stand, are  
15 you objecting to his report coming into evidence?

16 MR. WARD: Your Honor, it really is what the  
17 Court's ruling is. I do object on hearsay, but courts often  
18 let expert reports in. As long as it's uniform, it's okay  
19 with me.

20 THE COURT: 44 will be admitted.

21 (Petitioner's Exhibit 44 received in evidence.)

22 BY MR. MIN:

23 Q Professor, you mentioned you were reviewing the Beykoz  
24 Family Court decision, right?

25 A Yes.

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1 Q And that's the divorce decree, correct?

2 A Yes.

3 MR. MIN: Your Honor, I'd like to show the witness  
4 a document that's been pre-marked as Petitioner's 28 for  
5 identification -- 29, apologies, 29.

6 THE COURT: 29?

7 MR. MIN: Yes.

8 THE COURT: And this is the petitioner's  
9 translation of the divorce decree?

10 MR. MIN: Yeah. For this witness, the operative  
11 document will be the second half, which is the Turkish  
12 divorce decree. But yes, this document, Exhibit 29, does  
13 include the TransPerfect translation.

14 MR. WARD: I just want to be clear. I will be  
15 objecting to this witness translating from Turkish to  
16 English before this Court, as he is not a translator, he was  
17 not provided as an expert in translation --

18 THE COURT: Yes, I think that would be a problem.  
19 I think you're going to have to have him rely on what you  
20 ultimately offer as the -- what you believe the translation  
21 to be so we can do it subject to connection of your  
22 translator coming in. But I don't think he should now be  
23 translating the Turkish document.

24 MR. MIN: Well, yeah. I mean, I'm not asking him  
25 to read the Turkish language documents and say what it says,

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1 but I am going to ask him -- I mean, you know, he's a  
2 Turkish professor. I was planning on asking him to look at  
3 the Turkish language document to opine on what it signifies,  
4 and I think those are two different things.

5 THE COURT: What it is?

6 MR. MIN: Well, no, what the meaning of the  
7 provisions are. I think that's the crux of the issue here.  
8 I'm not asking him for a translation of the sentence. I'm  
9 asking him for --

10 THE COURT: Well, do it with the English document.

11 MR. TZUR: And, Your Honor, that's exactly the  
12 point of the objection I had earlier. The English document  
13 in 28 and 29 is not going to be allowed into evidence  
14 because they're not going to lay the foundation for those  
15 translations.

16 THE COURT: Well, the key provisions, you're going  
17 to have an interpreter talk about the key provisions,  
18 correct?

19 MR. MIN: Yes, Your Honor. There's also no  
20 authentication rule under the Hague Convention. We can cite  
21 to that. But authentication rules are not in place in Hague  
22 Convention cases, and I can get the cite for that  
23 immediately with a string cite of hundreds of cases in the  
24 U.S. that have applied that rule. Again, this is such a  
25 last minute issue that we were not prepared until earlier

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1 today when we were informed that there would be a last  
2 minute objection on this issue to address.

3 But yes, we do have an interpreter who was here  
4 earlier and who will be here tomorrow who will address the  
5 accuracy of the translations.

6 I will also note that I think one of the -- I  
7 guess to me what was strange about their Turkish expert  
8 reports was that they're Turkish people, but they were  
9 relying on what we considered to be a very serious and gross  
10 error in translation --

11 THE COURT: Well, we can get to that when we get  
12 to their case. Let's not talk about that now.

13 But I think that your questions to him in terms of  
14 what a specific phrase means should be directed to the  
15 translation that you're contending is accurate that you will  
16 ultimately be able to put in someone to say that's the  
17 translation. But to ask him about the English as opposed to  
18 having yet another person translating, I don't think that's  
19 appropriate because this witness hasn't been offered as an  
20 expert to translate.

21

22 (Continued on the following page.)

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1 (Continuing.)

2 MR. MIN: Your Honor, I have a suggestion. The  
3 witness for this purpose could testify in Turkish and we have  
4 a certified interpreter who is here on standby for --

5 THE COURT: No. You've got an English translation  
6 that you want to rely on, correct?

7 MR. MIN: I do.

8 THE COURT: Then ask this witness questions about  
9 your English translation that you want to rely on.

10 MR. MIN: Your Honor, I'm not arguing this for any  
11 other purpose, but do I find it odd that these are Turkish  
12 lawyers or legal professionals who would be reading a  
13 document in their second language instead of their native  
14 language to explain what the native language means under  
15 believe their own domestic laws. But I'm happy to do that.  
16 I'll move on.

17 MR. TZUR: Your Honor, I just stand on the point  
18 that if he goes this direction using Exhibit 28 or 29 with  
19 this witness, and he doesn't lay the foundation for those  
20 exhibits, he's going to be stuck where all of this testimony  
21 is going to be have to be stricken later on in the case.

22 THE COURT: We'll worry about that parade of  
23 horribles later. You don't need to tell me that.

24 Let's move on.

25 MR. MIN: Thank you, your Honor.

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1 BY MR. MIN:

2 Q Look at Exhibit 29, when we get to the end if you  
3 can -- I'll ask you the question once you've reviewed  
4 everything.

5 A You were asking me about the special provision on these  
6 document?

7 Q I'm asking you to review the document.

8 A I can't hear you.

9 Q I'm asking you to review the document. We can start  
10 again, but I'm asking you to look at the document and review  
11 it that you understand what you're looking at so then I can  
12 ask my question afterwards.

13 A Yes, yes, I understand. I'm looking to the court  
14 decision of --

15 THE COURT: That's a translation of the original  
16 document, to your understanding, a translation in English;  
17 is that correct?

18 THE WITNESS: Yes, of course. Yes, of course it's  
19 in English. We write it in Turkish in Turkey.

20 MR. MIN: Your Honor, one second. Your Honor,  
21 we're actually going to show the witness a document marked  
22 as 28 instead.

23 MR. TZUR: Same objection, Judge.

24 THE COURT: Okay.

25 BY MR. MIN:



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1 Q Professor, I apologize for the change in course. We'll  
2 pull up another exhibit and I'm going to ask you if this is  
3 the document that you reviewed in preparing your opinion and  
4 report.

5 A Yes, that is the English version --

6 Q Let me -- I'll pull up the document. Wait for the  
7 document to come up.

8 A Okay. Yes. It is a little bit small. Okay, that's  
9 better.

10 (Witness reviewing document.)

11 Q Is this the Beykoz Family Court decision that you were  
12 referencing earlier?

13 A Actually I used the original court document in my  
14 opinion.

15 Q When you say original, what do you mean by that?

16 A The Turkish version. And also this is the English  
17 version, but I rely on the Turkish one. This is the  
18 original Turkish.

19 Q And this is what you looked at when drafting your  
20 report?

21 A Yes, I looked at the English one and the Turkish one;  
22 but of course, I rely on the Turkish one. As a Turkish  
23 lawyer, the binding decision is the Turkish decision in  
24 Turkey of course.

25 Q Did you review any other paperwork or -- withdrawn.

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1 Did you review any other documentation or look at  
2 any Turkish laws or any other laws in preparing your  
3 opinion?

4 A Yes, of course I rely on other Turkish court decisions.  
5 Especially higher court decisions, Court of human rights.  
6 And I use some American court decisions, French court  
7 decisions. Of course I checked for other documents and  
8 academic writings and essays. Also, I have a list, in my  
9 opinion, I have a list that I check the papers that I  
10 observed.

11 Q So I'll ask you a general question. When trying to  
12 understand the range of Turkish custody rights, what laws  
13 both Turkish and international would one be familiar with in  
14 order to assess the range of Turkish custody rights?

15 A Actually, the main court is Turkish civil court, which  
16 identifies the custodies and the rights of the parents. We  
17 use this court in domestic situations. Also, especially  
18 joint custody issues, we primarily look for the European  
19 Convention on Human Rights Article 5. And if there is a  
20 foreign element in this case, we also use, I call  
21 (unintelligible) international law, Hague Convention, and  
22 other conventions. That's in general, like you said.

23 Q Why do you say that do you look towards the European  
24 Convention of Human Rights Article 5?

25 A Because in Turkish civil court we have no provision on

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1 joint custody especially. But after, I guess 2016, we  
2 became a part of protocol five of European Convention Human  
3 Rights, and we accepted the joint custody in our law system.

4 Q How is the European Convention of Human Rights  
5 acknowledged or accepted under the Turkish legal system?

6 A It has direct application in our Turkish law system.  
7 It's at constitution of order. According to the Article 19  
8 of our constitution, the international conventions has  
9 direct application and clear application to the domestic  
10 laws.

11 Q When you said direct application, I didn't catch a word  
12 you said. You said direct application and something else  
13 related to Turkish civil --

14 A Yes. Direct application means there is no need of  
15 approval of our senator to apply these. That means sign  
16 these documents in diplomatic ways, the court directed to  
17 the European courts of Human Rights Convention. And if  
18 something challenge with this convention, if there are  
19 domestic laws conflicts with this human right convention, we  
20 have priority to the human rights conventions. It's order  
21 of our constitution law.

22 Q So under Turkish constitutional law, priority is given  
23 to the international conventions and international legal  
24 instruments over Turkish domestic law if there is a  
25 conflict?

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1 A Yes.

2 Q And is there such a conflict when it comes to the idea  
3 of sole custody versus joint custody in Turkey?

4 A Yes. Before that convention our courts not decided  
5 joint custody. They always use custody to a part solely.  
6 But after we sign this convention, as a human right we  
7 accept that mother and father as a human right have a right  
8 of equal powers on their joint child even if they are  
9 divorced.

10 Q So what is the process for establishing joint custody  
11 rights under Turkish law?

12 A In Turkish law if parties have a protocol and both  
13 parties accept the divorce decision or wants the divorce,  
14 they can have joint custody. But if parties are not agreed  
15 upon the divorce and custody matters, the court decides sole  
16 custody. So joint custody only decided with the intentions  
17 of the parties.

18 Q Okay. So if the parties resolve their divorce and  
19 agree to joint custody, then the Turkish courts can grant  
20 that. But if the parties do not agree --

21 A Yes.

22 Q -- to joint custody, then the Turkish courts cannot  
23 give joint custody?

24 A Yes.

25 Q Now, having reviewed the Beykoz Family Court decision,

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1 in this case the parties agree to resolve their divorce?

2 A Yes.

3 Q By joint custody?

4 A Yes, of course.

5 MR. WARD: Objection, your Honor, the document  
6 speaks for itself. What it says is what it says.

7 THE COURT: I'll allow him to explain his opinion  
8 he's reached. And then you can lay the foundation for why  
9 he reached that opinion.

10 BY MR. MIN:

11 Q Why do you say of course professor?

12 A Yes, this is a divorce by the parties. They make a  
13 divorce by protocol. It clearly writes in the decision.

14 MR. MIN: Your Honor, we're going to show the  
15 witness the document previously marked as 29.

16 MR. WARD: Your Honor, same objection. If I could  
17 just have a standing objection for these two.

18 THE COURT: You have a standing objection to the  
19 use of 28 and 29.

20 Is the difference that 29 is the entire document  
21 and 28 is a portion?

22 MR. MIN: No. I mean --

23 THE COURT: What is the difference.

24 MR. MIN: 29 is from TransPerfect here in the  
25 United States. 28 is a prior translation in Turkey.

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1 THE COURT: Both of them are translations of the  
2 entire document?

3 MR. MIN: Yes.

4 THE COURT: Okay.

5 BY MR. MIN:

6 Q Professor, we have open a document that was previously  
7 marked as 29, which is another translation of the Beykoz  
8 Family Court divorce decree. I would like you to walk us  
9 through why you say clearly that this was pursuant to a  
10 divorce protocol that granted joint custody to the parties.  
11 Can you point out what provisions lead you to say that?

12 A First of all, in the second sentences it says the  
13 plaintiff's attorney states a duty to hearing with the  
14 protocol data, says. So it's a divorce by protocol, first  
15 of all, it writes on the decision.

16 Q What is a divorce by protocol -- we're not familiar  
17 with all the terminology in Turkish courts, can you explain?

18 A As I said before.

19 Q Hold on.

20 A Okay.

21 Q Just so I can finish my question and it's clear on the  
22 record.

23 Can you explain what protocol means, what a  
24 divorce protocol is?

25 A As I said before, our civil court has not a provision

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1 on joint custody. But by the convention, European  
2 Convention on Human Rights, if the parties divorce by a  
3 protocol mutual consent the court can decide joint custody.  
4 So at the beginning I saw that, in accordance with the  
5 protocol data, writes there, so I understand that this is  
6 divorce by protocol so the court has the power to grant  
7 joint custody.

8 Q So protocol basically means by agreement?

9 MR. WARD: Objection, your Honor, that is leading.

10 A Yes, by agreement. Yes, by agreement, as I said,  
11 mutual consent.

12 Q Professor, when --

13 MR. WARD: I'm objecting and moving --

14 THE COURT: Overruled.

15 BY MR. MIN:

16 Q I apologized, I interrupted you before.

17 You were going through and explaining what  
18 provisions of the document led you to opine that this was  
19 clearly a divorce and custody order that recognized joint  
20 custody. You started with the protocol recognition, I  
21 interrupted you, so please continue.

22 A Okay. Please go down. Go down, please. Go down. A  
23 little bit up. The screen is a little bit small for me, a  
24 little bit hard to read. Okay. Now I see half. Okay. Can  
25 you go up again please, now I can see clearly. Up, please.

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1 You can stop here. I can't see all page in my screen so I  
2 can't read it exactly, maybe adjust.

3 Q Professor, is it easier if you look at the Turkish then  
4 we can get to the English corresponding page?

5 A I prefer the Turkish one.

6 Q When you point out what section you want to go to next,  
7 then we'll go to the English language part of that.

8 A Okay, go down.

9 With Article 1, the court decision starts here.  
10 The final court decision starts here. So you can go down,  
11 please.

12 Q While you're going through that, why do you say that  
13 the court decision starts with number one?

14 A Outside of this decision is a justification of the  
15 court decision. In Turkish courts we are several parts.  
16 The first part is the part is claims and defenses. The  
17 second part is the justification of the court. And the  
18 third part is the decision.

19 In Turkish law, only the decisions become final  
20 and binding in our law system. And after a court decision  
21 becomes final, the other parts have no legal meaning in our  
22 Turkish system. So the final and binding parts starts with  
23 the Article 1 that I showed to you.

24 Okay. We can go down. First of all, in paragraph  
25 3.4 --



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1 Q We're going to go back to the English language part of  
2 this.

3 A 3.4.

4 Q Please continue.

5 A We find the part okay. In this part -- actually, if  
6 you let me a little introduction, the custody meaning in  
7 Turkish law.

8 We have some of (unintelligible) about the  
9 custody. A custody occurs from education, healthcare,  
10 decide the place of residence, and govern the child's  
11 (unintelligible). These four elements becomes a custody  
12 right in Turkish law. When I look at this paragraph in 3.4:  
13 The joint child will attend schools determined by the mutual  
14 decision of the parties.

15 So as I said, this is a mutual divorce: Mutual  
16 decision of the parties throughout their educational life,  
17 including but not limited to Enka schools, Hisar schools,  
18 Koc school, Pierre Loti French school, or equivalent  
19 schools.

20 Q Go slower.

21 A Okay. Especially here we have some schools which are  
22 located in Istanbul. And after this of wording in the  
23 second sentence it says: Provided this schools are  
24 determined by the mutual decision of the parties; Zuhtu Onur  
25 Tatari irrevocably agrees and undertakes to cover the fees

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1 of the schools the joint will attend -- okay.

2 So the parties jointly decided that.

3 The joint child will have his education of life in  
4 Istanbul, the schools that specifically write here.

5 So as a mutual says, one part of custody, which I  
6 said was the child's education, parties have the same  
7 power to decide which school the child will go. So it's one  
8 of the elements of custody in Turkish law.

9 Q Professor, I heard you mentioned there are four  
10 elements to child custody writes in Turkish law I apologize,  
11 I'm not sure I caught all four. Clearly one of them is  
12 education.

13 A Okay. Education. Healthcare, place of residence, and  
14 the goods of child.

15 Q What is the last one, that's the one I'm missing?

16 A The child's, if the child has a money or real estate to  
17 manage it for the child.

18 Q The financial interests of the child, for example?

19 A Yes, financial interests, yes. Four elements. So one  
20 of these elements is education, and parties have a mutual  
21 decision about the schools that child will go. So first  
22 element the parties have mutual consent, the joint power to  
23 decide which school the child goes; and especially they are  
24 all in Istanbul, not in Turkey, specifically in Istanbul.

25 Q And so I'll let you continue on pointing out what

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1 provisions led you to opine that the parties here have joint  
2 custody.

3 A Okay. Stop here. Especially 3.7 we have to look and  
4 3.8 also.

5 Q What was the next provision? I'm sorry, we had some  
6 technical issues.

7 A Okay. Provisions of paragraph 3.8 and seven.

8 Q 3.8 and 3.7?

9 A Yes.

10 Q Okay we'll go back to the English language.

11 A As I mentioned before, there are three elements of  
12 custody. In 3.7 it says: Neva Durust Tatari agrees,  
13 acknowledges, and undertakes irrevocably that if she decides  
14 to live abroad together with the joint child, she will  
15 obtain the approval and opinion of Zuhtu Onur Tatari. So  
16 according to Turkey law to decide where the child lives  
17 gives the power of custody for the parents. And at this  
18 point I have to clarify that.

19 According to The Hague convention, child  
20 abduction, custody rights especially covers the right of  
21 the -- sorry, I closed my camera -- right to determine the  
22 child's residence if include meaning rights of custody. So  
23 what in Turkish law and Hague Convention, the power to  
24 decide of children residence is equal to the custody rights.

25 So here we say, we can see that Neva Durust Tatari

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1 can't leave Turkey for a permanent time for living outside  
2 with the joint child, has not a sole power. By the decision  
3 of the court, the court granted that Neva Durust Tatari has  
4 to take approval of the father if she wants to live with the  
5 child for a permanent time.

6 In 3.8 says: Neva Durust Tatari agrees,  
7 acknowledges and undertakes irrevocably that she will obtain  
8 the approval and opinions of Zuhtu Onur Tatari when any  
9 decision is required with regards to the health status of  
10 joint child. Education, place of residence, and also  
11 healthcare.

12 So in this third part, in paragraph 3.8, the court  
13 decided that the mother has to take opinion and approval of  
14 the father in regards to the health of the joint child.

15 Also between paragraph 3.5 to 3.8, also father to  
16 the obligation on financial service and financial custody  
17 rights. Also they have a joint power and obligation about  
18 the child's finances.

19 So with all these paragraphs together, it's  
20 obviously a joint custody, especially according to the  
21 convention Hague Convention Article 5A.

22 Q Professor, is there anything in this divorce decree as  
23 far as you read that limits the mother's ability to travel  
24 with the child outside Turkey, to go on vacation outside  
25 Turkey?

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1 A No, there is no, no.

2 Q So she doesn't need his approval to go on vacation with  
3 the child outside Turkey; is that right?

4 A Yes. For example, she wants to go two-week travel,  
5 there is no need approval or opinion of the father. The  
6 court especially decides when she wants to live outside  
7 Turkey permanently with the child. But she can make a  
8 travel, of course.

9 MR. MIN: May I have one moment?

10 THE COURT: Sure.

11 MR. MIN: No further questions, your Honor.

12 THE COURT: Okay.

13 MR. WARD: May I proceed, your Honor?

14 THE COURT: Yes.

15 CROSS-EXAMINATION

16 BY MR. WARD:

17 Q Good afternoon, Professor.

18 A Good afternoon.

19 Q I want to talk about the divorce protocol for a moment  
20 and the divorce judgment. You're aware, Doctor, that the  
21 divorce protocol is an agreement that the parties reach  
22 prior to coming to court to get their divorce, correct?

23 A Yes.

24 Q And you're aware, sir, that if the parties agree to  
25 sole custody as part of their protocol, that could be

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1 adopted by the court, correct?

2 A Could be, not have to be.

3 Q I'm asking you, sir, just because there is a protocol  
4 agreed to by the parties it doesn't mean they have joint  
5 custody, correct?

6 A Can you repeat the question. Can you speak a little  
7 bit slowly so I can understand you much more clearly, if  
8 it's possible for you?

9 Q I will do my best, Professor.

10 A Thank you.

11 Q Isn't it true that just because the parties agree to a  
12 protocol to resolve their divorce, it doesn't mean they have  
13 joint custody, correct?

14 A Yes.

15 Q The Turkish civil code sets forth custody regulations  
16 in a case of a divorce, correct?

17 A Parts are correct.

18 Q Okay. Article 336 of the Turkish civil code provides  
19 that a child born within a marriage, both parents  
20 essentially have joint custody, correct?

21 A Yes.

22 Q The code then provides that once there is a divorce  
23 only one parent is granted custody of the child according to  
24 the Turkish civil code, correct?

25 A Yes.

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1 Q And granting custody to just one parent is what we call  
2 sole custody, correct?

3 A Yes.

4 Q And a parent who does not have sole custody under the  
5 Turkish code, is granted visitation rights, correct?

6 A Yes.

7 Q And the parent who has sole custody of the child may  
8 make all decisions for the child including educational and  
9 medical decisions, correct?

10 A No.

11 Q You're saying if a parent who has sole custody of a  
12 child they are not empowered to make educational decisions  
13 for a child?

14 A According to the Turkish civil court, judge has decide  
15 in which topics the sole custody rights can be used by one  
16 party, and some topics, some matters, the parties have the  
17 joint power to decide on this matters. It's not provision  
18 of Turkish civil court.

19 Q But I'm asking you, under Turkish law, if one party has  
20 sole custody, isn't it true that they have the right to make  
21 the educational decision for the child?

22 A Even if not granted otherwise by the court, yes.

23 Q Okay. And if a party has sole custody, they have the  
24 right to make education -- medical -- educational decisions  
25 for the child, correct?

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1 A If not decided otherwise, yes.

2 Q And another decision a parent with sole custody can  
3 make is whether to relocate to another country with the  
4 child, correct?

5 A If not -- again, if the court not granted another  
6 provision, yes.

7 Q The right to travel is a constitutionally protected  
8 right in Turkey, correct?

9 A Yes.

10 Q And custody encompasses the right to travel with the  
11 child, does it not?

12 A Yes, but --

13 Q If a parent has sole custody they have the absolute  
14 right to take the child abroad without the other party's  
15 consent, correct?

16 A No. If you want only yes or nos, or do you want some  
17 explanation from me?

18 Q I would like the answer to the question in a yes or no  
19 form. Your attorney will have a chance --

20 A Okay.

21 Q I just want to make sure you are saying under oath to  
22 this court that if a parent has sole custody they don't have  
23 the absolute right to take the child abroad without the  
24 other party's consent. That's your testimony, sir?

25 THE COURT: I think the question is confusing.



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1 Could you restate the question? I'm going to have him  
2 restate it, too many negatives in there.

3 BY MR. WARD:

4 Q If a parent has sole custody, do they have the absolute  
5 right to take the child abroad without the other party's  
6 consent?

7 A When you say take the child out for travel or permanent  
8 time, which one? I'm not understanding exactly, if you can  
9 clear that I can answer.

10 Q So first of all, I'll ask, is it true they have the  
11 absolute right to travel with the child without the other  
12 party's consent?

13 A Yes, she can -- she or he can travel.

14 Q Isn't it true they have the right to relocate with the  
15 child without the other party's consent?

16 A If the court not granted; otherwise, yes.

17 Q Okay. And the principle of the custodial parent having  
18 the absolute right to take a child abroad without the  
19 consent of the other parent was established by the Turkish  
20 Supreme Court in 2015, wasn't it?

21 A I don't know this court decision 2015. I can't recall  
22 that --

23 Q Okay.

24 A -- this decision that you mentioned.

25 Q Okay. Let me ask you this, without giving the specific

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1 year, the principle custodial parent having the absolute  
2 right to take the child abroad without the consent of the  
3 other parent is a principle established by the Turkish  
4 Supreme Court, correct?

5 A I can't answer that yes.

6 Q So with your expertise in Turkish law and all of your  
7 qualifications, you're not aware of what the Turkish Supreme  
8 Court's position is on whether a parent can take a child out  
9 of the state without the other parent's consent, is that  
10 your testimony, sir?

11 A But you ask me -- you want me to answer your questions  
12 only yes or no. So some decisions states that. If the  
13 other parent has the visitation right, you can't take the  
14 child abroad. So when you make it, you violate the other  
15 parts with visitation rights.

16 Q Sir --

17 A And also in some decisions --

18 Q Didn't you testify on direct that there are four  
19 principles of custody?

20 A Yes.

21 Q One, educational, right?

22 A Yes.

23 Q Two, medical, right?

24 A Yes.

25 Q Fourth was financial matters relating to the child,

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1 correct?

2 A Yes.

3 Q Remind me the third one?

4 A To decide the residence of the child.

5 Q To decide the residence of the child, whether it's  
6 domestic or overseas, correct?

7 A No.

8 Q Okay.

9 A When we are talking about a domestic case, the custody  
10 the sole custody, gives the parent dual power. But if a  
11 party wants to leave the country with the child, it's always  
12 violate the other party's visitation rights; and of course,  
13 if the court not decided otherwise.

14 (Continued on next page.)

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1 CROSS-EXAMINATION (Continued)

2 BY MR. WARD:

3 Q I want to make sure I understand what you're saying.

4 Are you saying that a party with the sole custody  
5 has the absolute right to take the child overseas unless a  
6 Turkish court tells them they cannot do it?

7 A Yes.

8 Q Okay.

9 Now isn't it true, sir, that if a parent with sole  
10 custody does take the child overseas, then action must be  
11 taken, either automatically or upon notification of one of  
12 the parties in the Turkish court, to address the other  
13 parent's access schedule or visitation schedule, correct?

14 A Right.

15 Q One of those actions is that the moving party can apply  
16 to the Turkish court to rearrange the schedule of the  
17 visiting parent, correct?

18 A Yes, correct.

19 Q And I think it's what you were alluding to, sir. A  
20 remedy of the left-behind parent could be to fight the  
21 relocation is to seek a change of custody of sole custody to  
22 them so that they can then have a decision of where the  
23 child can live.

24 That's a remedy correct, sir?

25 A Yes.

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1 Q And the left-behind parent could then go to the court  
2 and seek a change of custody, because the relocation hinders  
3 their ability for visitation, correct?

4 A It depends on the parties. Sometimes they can ask for  
5 a new visitation schedule, or sometimes the party wants the  
6 sole custody to itself.

7 Q Okay. Now you opine that joint custody is available  
8 under Turkish law, correct?

9 A Yes.

10 Q And you say that even though there's no provision for  
11 joint custody under the Turkish code, correct?

12 A It's in the courts, yes.

13 Q Would you agree, sir, that due to restrictions and  
14 challenges of the Turkish law, courts in Turkey --

15 A Can you speak a little bit slower, please.

16 MR. WARD: I apologize, sir. I'm going to try  
17 again.

18 THE WITNESS: I apologize for my English.

19 MR. WARD: Not at all. Not at all.

20 Q Would you have knowledge that due to the restrictions  
21 and challenges in Turkish law, courts in Turkey are  
22 reluctant to approve joint custody?

23 A The courts lock in you said.

24 MR. WARD: Okay, I'm going to try it again. And  
25 if I have to change any words, I will, if it's a

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1 comprehension problem.

2 Q Would you agree that due to the limitations in Turkish  
3 law, courts in Turkey are reluctant to approve joint  
4 custody?

5 A According to the civil courts or --

6 Q Generally.

7 A -- the old.

8 Generally, the court can allow to decide joint  
9 custody if the parties have mutual consent on that;  
10 otherwise, not.

11 Q And, isn't it true, sir, that a court in Turkey could  
12 reject the joint custody protocol if it concludes that the  
13 protocols do not align with the public order?

14 A Yes.

15 Q Now if the parties do agree to a joint custody in  
16 Turkey, and the court approves it, and one parties acts  
17 unilaterally in contravention of the protocol, could the  
18 aggrieved party, the party who did not have a say, go to  
19 court and seek to enforce the Turkish protocol?

20 A So enforce or to change the court's custody decree?

21 Q So I understand that they can seek to change it. My  
22 question is, and I'll give you an example.

23 If a mother and father agree to joint custody and  
24 the father goes and makes a doctor's appointment that the  
25 mother objects to without her opinion, could the mother go

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1 to court and say, no, my opinion should be given weight in  
2 this decision?

3 A Uh-huh. Uh-huh.

4 Q Can you answer "yes" or "no" just for the court  
5 stenographer?

6 A Yes.

7 Q Okay.

8 Now do you agree, sir, that whether the father has  
9 a right of custody under the Hague Convention in this case  
10 comes down to whether the mother has sole custody in this  
11 case, or whether the parties have joint custody in this  
12 case?

13 A Try repeat the question, please.

14 Q Do you agree that the question of whether the father in  
15 this case has, quote, rights of custody, unquote, under the  
16 Hague Convention will be determined by whether it is  
17 determined that the mother has sole custody of the child, or  
18 the father has joint custody of the child?

19 Do you agree with that statement?

20 A I'm trying to answer the question exactly.

21 Q I'm going to try it again.

22 You talked about how there is a wrongful removal  
23 if the father's rights of custody are violated under the  
24 Hague Convention, right?

25 A Yes.

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1 Q In this case, in this case, would you agree that if the  
2 mother has sole custody of the child, that the father does  
3 not have rights of custody under the Hague Convention?

4 A No.

5 Q I want to ask you a question, a hypothetical question,  
6 sir.

7 If the judge in a divorce in Turkey were to order  
8 the following, quote, the parties shall share custody of the  
9 child in common, unquote.

10 In your opinion, what type of custody arrangement  
11 would this be?

12 A We're talking about a domestic case in Turkish law  
13 or --

14 Q A domestic case under Turkish law.

15 A In the domestic case, like I said, this is a joint  
16 custody.

17 Q Thank you.

18 Same circumstances. What if the judge were to  
19 order, quote, the mother shall be appointed as the custodian  
20 of the child, unquote.

21 What type of custody would that be?

22 A Sole custody.

23 Q Thank you.

24 Hypothetically, sir, if a party in court as a part  
25 of a divorce states the following, I quote: I understand



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1 that the defendant may legally make decisions in her sole  
2 discretion in line with her custodial rights, including  
3 material decisions about the child's health care and moving  
4 her residence to abroad, unquote.

5 What type of custodial arrangement would a  
6 statement like that indicate is present?

7 A In Turkish law?

8 Q In Turkish law.

9 A Parties statement, yes. In Turkish law, parties  
10 statements has no legal application in our system --

11 Q Okay. I'd like you to answer --

12 A -- court decision.

13 Q I would like you to answer my question. My question is  
14 very different. My question is:

15 If a party stands up in court and acknowledges the  
16 quote that I just gave you, does that indicate to you that  
17 there is a sole custody situation?

18 MR. MIN: Objection. It's the relevance the  
19 question, it has no bearing.

20 THE COURT: Overruled.

21 Q Sir?

22 THE COURT: Can you answer the question?

23 THE WITNESS: Yes.

24 I'm waiting for you repeat the question.

25 If the parties says that in the courts, the

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1 parties says, right?

2 Q Yes.

3 Do you want me to repeat the quote?

4 A Yes. Yes, please.

5 Q I'm happy to do that, sir.

6 Quote, I understand that the defendant may legally  
7 make decisions in her sole discretion in line with her  
8 custodial rights, including material decisions about the  
9 child's health care and moving her residence to abroad,  
10 unquote.

11 A This is sole custody.

12 Q Thank you.

13 I'm going to move away from the hypotheticals and  
14 talk about this case for a minute.

15 You testified earlier that the remedy for a  
16 parent, without custody in the sole custody regime, to  
17 object to unilateral action by the sole custodian is to seek  
18 a change of custody from the courts, correct?

19 A Yes.

20 Q You also mentioned that a joint custodian could simply  
21 seek enforcement of his joint custody rights.

22 That is a possible remedy, correct?

23 A Yes.

24 Q Are you aware, sir, that after Ms. Durust relocated to  
25 the United States with the parties' child, Mr. Tatari filed

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1 an application to change custody?

2 Are you aware of that?

3 MR. MIN: Objection. I think that's a  
4 mischaracterization of the evidence.

5 I'm not sure that's a good --

6 MR. WARD: Subject to connection, Your Honor,  
7 we'll be putting that material into evidence.

8 THE COURT: All right.

9 Q Were you aware of that, sir?

10 A Yes.

11 Q And you testified that the proper procedure, when the  
12 sole custodian properly relocates with a child, it's whether  
13 there be a proceeding brought to rearrange the access for  
14 the schedule for the left-behind party?

15 A Can you speak please a little slowly.

16 Q I apologize. I will keep trying.

17 A No problem. You're welcome.

18 Q Okay, thank you.

19 You also testified that the proper procedure, when  
20 the sole custodian properly relocates with the child is for  
21 there to be a proceeding brought to rearrange the access  
22 schedule for the left-behind party, correct?

23 A Yes.

24 Q Are you aware, sir, that the after she relocated to the  
25 United States, Ms. Durust filed a proceeding to arrange the

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1 access schedules between the child and Mr. Tatari?

2 A I have no details about this case. I don't see that  
3 files in that way details.

4 Q Understood.

5 Now, sir, prior to issuing your report in this  
6 case, did you carefully read the parties' divorce decree and  
7 protocol?

8 A Yes.

9 Q And having read it carefully, it is your conclusion  
10 that the divorce decree and underlying protocol provide that  
11 both parties are obligated not to relocate with a joint  
12 child abroad without the other party's consent, correct?

13 A Yes.

14 Q And this is one of the principal reasons why you  
15 believe the parties have joint custody, correct?

16 A According to the Hague Convention, yes.

17 Q Okay.

18 MR. WARD: And I'd like, if we could, bring up  
19 Exhibit 22. Make it as big as possible.

20 Mr. Min, I'm okay with him reading from the  
21 Turkish for this part if you are.

22 Mr. Min, I'm pulling up our document, but I'm okay  
23 with him looking at the Turkish and then going back like you  
24 did for yours. Okay.

25 Would you make it bigger, as big as you can, and

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1 can you go --

2 THE WITNESS: A little bit big. I can see it. A  
3 little small, please.

4 Q Okay.

5 I'm going to ask you to review this document and  
6 tell me where it states that Mr. Tatari may not relocate the  
7 child without the mother's consent?

8 A You are asking me in this document where Mr. Or  
9 Ms. Tatari, which one?

10 Q Mr. Tatari, there is only, I don't think --

11 A Mr. Tatari.

12 Q Yes.

13 You said both parties aren't able to do so. I'm  
14 asking you, Mr. Tatari was one of the parties, where does it  
15 say in this document Mr. Tatari cannot relocate without the  
16 mother's consent?

17 A Okay, Mr. Tatari cannot have the sole power to change  
18 the residence of the child without the mother's consent.

19 Q Where are you reading, sir?

20 Just give me the citation, the paragraph, the  
21 page.

22 I know that's your conclusion that that's what is  
23 this document says and that's why they have joint custody,  
24 but I want you to tell me where it says on the document it  
25 says that?

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1 A We don't need to write in the document in Turkish law.

2 Q I just want to understand what you're saying.

3 You're saying under no circumstances, under the  
4 law of Turkey, can a father relocate with a child without  
5 the mother's consent?

6 A Yes. Not allowed.

7 MR. WARD: Okay. I just want to draw your  
8 attention to page 13 of your report.

9 Can we pull it up, please? Thank you.

10 Next page. If I have the wrong page, I apologize.

11 And I'd like to you increase the size and focus on  
12 paragraph 45, please.

13 Q Isn't it true, sir, that the expert report that you put  
14 forth to this court, based on your close review of the  
15 Turkish document, you wrote in paragraph 45:

16 It is explicitly stated in the Beykoz family court  
17 decision in the underlying custody protocol that both  
18 parents are obligated not to relocate the joint child abroad  
19 without the other party's consent.

20 That's what you wrote, sir, right?

21 A Uh-huh. Okay.

22 Q That in the report that you put into -- that you had  
23 put into evidence in this case, right?

24 A Yes.

25 Q And it's true, sir, that there's nothing in the Beykoz

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1 family court decision, and the underlying custody protocol,  
2 that states that Mr. Tatari cannot travel abroad -- cannot  
3 relocate abroad with the child without the mother's consent,  
4 correct?

5 A No. I'm not talking about travels. Relocation.  
6 Permanently.

7 Q So I'm asking you, isn't it true that there's nothing  
8 in the divorce decision, and the underlying protocol that  
9 prohibits Mr. Tatari from relocating with the child without  
10 the other -- without Ms. Durust's consent, correct?

11 A There's nothing write in this protocol because this is  
12 a provision of general rule of Turkish law.

13 But also --

14 Q Sir. Sir --

15 A -- they can see, they can look --

16 Q Sir, I want to say, you didn't write here, it is a  
17 matter of general Turkish law, you wrote --

18 A Uh-huh.

19 Q -- the place we would find the mutual prohibition on  
20 the parties' traveling, which underscored your joint custody  
21 finding, is in the divorce decision and protocol.

22 That's what it says here, correct?

23 A Can you repeat the last sentence you said?

24 Q That's what it says in your report, that the place we  
25 find in your report for your basis for joint custody, is in

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1 the fact that the decision and underlying protocol provides  
2 both parents are obligated to get the consent of the other  
3 party before relocating abroad, correct?

4 You said that here.

5 A Yes. Yes, I said it.

6 Q And there are no words in the decision of protocol that  
7 state that Mr. Tatari cannot relate abroad without the  
8 mother's consent, correct?

9 A As words, not.

10 Q Thank you.

11 Now, sir, did you have an opportunity to review  
12 the decision dated July 12th, 2024, of the Istanbul 17th  
13 Family Court related to Mr. Tatari's application to that  
14 court to prevent Ms. Durust from -- and I want to get the  
15 right words here -- from going abroad with the child?

16 A No.

17 Q You have not seen it.

18 Let me ask you then a hypothetical, sir.

19 If a Turkish court declared in a decision that  
20 Ms. Durust has custody of the child and she may use her  
21 rights arising from custody, and she has the right or  
22 initiative to go abroad, is that an indication that  
23 Ms. Durust has the right to go abroad without the father's  
24 consent?

25 A For what purpose? I don't see the document, so I can't



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1 really --

2 MR. WARD: Put it up there.

3 A -- say anything.

4 MR. WARD: And, Your Honor, we're going to be  
5 marking this as L3, I think for the convenience of the  
6 record.

7 Can you make it bigger, please. Thank you.

8 I'd like you to take a minute and review this  
9 document, sir.

10 Q You've never seen this before?

11 A No.

12 Do you have the Turkish version of this decision?  
13 Okay.

14 MR. WARD: You can read the Turkish, but we're  
15 going to go back to the English.

16 THE WITNESS: Okay, please go down.

17 Okay.

18 MR. MIN: Your Honor, can we just get like a  
19 two-minute bathroom break while the witness is reviewing  
20 this document?

21 THE COURT: We'll wait until you get back.

22 (Pause in the proceedings.)

23 THE WITNESS: Okay.

24 MR. WARD: Sir, we're going to wait.

25 THE COURT: We need to wait for Mr. Min to get

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1 back.

2 THE WITNESS: Your Honor, can I take a break?

3 THE COURT: Yes, of course, you can.

4 (Pause in the proceedings.)

5 THE COURT: Yes, go ahead.

6 MR. WARD: Thank you.

7 CROSS-EXAMINATION (Continued)

8 BY MR. WARD:

9 Q Have you had a chance to look at this document, sir,  
10 and read it fully?

11 A Yes.

12 MR. WARD: Can we turn back to the English,  
13 please.

14 Q Now you can see from this document this is a court  
15 order, sir, correct?

16 A Yes.

17 Q And you can see that when the judge was describing what  
18 the plaintiff -- excuse me, in the case we're seeking, and  
19 the plaintiff -- excuse me, what the defendant was seeking,  
20 and in this case the defendant was Mr. Tatari, correct?

21 A Yes.

22 Q And the plaintiff was Ms. Durust, correct?

23 A Yes.

24 Q Mr. Tatari, according to the court's rendition, was  
25 looking to prevent the plaintiff from abducting the child

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1 abroad without waiting for the case to finish, right?

2 A Yes.

3 Q And was looking for an order to prevent the joint child  
4 from going abroad without the knowledge of the client, which  
5 was Mr. Tatari or the court, correct?

6 A Yes.

7 Q And his basis for seeking this relief was that he  
8 didn't consent, correct?

9 A Yes.

10 Q And isn't it true that the court rejected that request,  
11 correct?

12 A Actually, I don't see the plaintiff's place clearly, so  
13 we are just looking quick --

14 Q Sir, focus on my question.

15 THE COURT: Go ahead.

16 A I don't know the details of the case, so just looking  
17 at this decree, what father wants and what the mother  
18 rejects, and the answers has been sealed in this case.

19 So just looking to this decree, I'm not sure about  
20 your question.

21 So it's not to -- it's -- it will not be true to  
22 answer just that paper, just with the paper.

23 Q Are you saying, sir, you can't tell us what the court  
24 order says by just looking at court order?

25 A Yes, of course, I don't know the place and the finest

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1 details. So it's not -- so especially in this decree, this  
2 decree is not finalized, so I don't know the procedure for  
3 what's going on in Turkey.

4 Q Sir, you read in this court order that it's been  
5 decided to reject the request.

6 You see those words correct, sir, in the last  
7 paragraph?

8 Yes or no?

9 A First of all, sorry, I can't answer that question just  
10 like that.

11 Q Okay, I'll withdraw it.

12 A See the English, Your Honor --

13 MR. WARD: Your Honor.

14 A -- just English translation. I can answer your  
15 question by looking at the Turkish version.

16 So at this point, I have not -- I'm not sure that  
17 the English version is exactly the same with the Turkish  
18 version.

19 You are showing me which one and you ask me some  
20 questions. If you show me the Turkish document, so I'm a  
21 Turkish professor, I can answer your questions much more  
22 better.

23 MR. WARD: Your Honor, I have no further  
24 questions.

25 A And I'm not sure --

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1 THE COURT: Okay. You don't want your question  
2 answered then. You're withdrawing the question.

3 MR. WARD: If I didn't already, yes, I'm  
4 withdrawing the question, Your Honor. I thought I did it  
5 already, but no further questions.

6 THE COURT: Okay.

7 Mr. Min, do you have questions simply on the  
8 questions that counsel asked?

9 MR. MIN: Understood. Just a few.

10 THE COURT: All right.

11 REDIRECT EXAMINATION

12 BY MR. MIN:

13 Q Good night, Professor. I know it's late over there so  
14 I won't keep you too long.

15 A Good night.

16 Q Mr. Ward was asking you some questions about Supreme  
17 Court decisions in Turkey.

18 Do you recall that line of questioning?

19 A Yes.

20 Q Okay. And you were talking about Supreme Court  
21 decisions, before Mr. Ward cut you off, that spoke to some  
22 of the issues you were testifying about, and spoke to the  
23 prohibition against removal if parents have certain  
24 visitation schedules.

25 Do you recall testifying about that?

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1 A Yes.

2 Q Okay. Can you talk about what Supreme Court decisions  
3 were referencing?

4 MR. WARD: Objection, Your Honor.

5 I was referencing a very specific Supreme Court  
6 decision, which he didn't know, and that's all he said, it  
7 was about one thing about the right to travel. That's the  
8 only thing I ever mentioned about Supreme Court. He said he  
9 wasn't aware of that, and we moved on.

10 THE COURT: Overruled.

11 Q Professor, can you elaborate on the Supreme Court cases  
12 that you were testifying about earlier?

13 A In my legal opinion, which write here, which writes on  
14 my report.

15 Q No, no. You were earlier talking about Supreme Court  
16 decisions that talked about a prohibition, or my  
17 recollection from my notes was you were talking about  
18 Supreme Court decision that reflected a prohibition against  
19 international relocation if it disrupted the left-behind  
20 parent's visitation.

21 A Yes.

22 Q Okay. Can you elaborate on that Supreme Court  
23 decision?

24 MR. WARD: Objection.

25 THE COURT: Overruled.

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1 A See in Turkish court decisions -- first of all, I have  
2 to say -- I have to make it clear for you.

3 In Turkish law, the court decisions is not as  
4 powerful as common law decisions. So we could have  
5 different court decisions, Supreme Court decisions, on the  
6 same topic.

7 So in some decisions, Turkish Supreme Court  
8 decided that if a court makes a visitation weekly for the  
9 other side, and the other party brings the child outside,  
10 you can't have the right to bring the child out of Turkey  
11 unless a court decree rules a new schedule or schedule for a  
12 visitation. So during that, you don't have this right.

13 But I have to make it clear for you here. We are  
14 talking about domestic decisions.

15 Okay, in this case, we have an international  
16 situation. So we are talking about -- if we are talking  
17 about domestic decisions, Supreme Court decisions, we cannot  
18 use these decisions in this case.

19 Q Why not?

20 MR. WARD: Objection to this new question. I want  
21 to object.

22 THE COURT: If you can't use it, then what's the  
23 point in going into it. Let's just move on to something  
24 else.

25 I think the witness is saying that in this context

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1 you can't rely on these decisions.

2 MR. MIN: Yes, I can ask him why not.

3 THE COURT: I mean, you're not opposing that  
4 principal, correct?

5 MR. WARD: Opposing the principal that?

6 THE COURT: That you can't rely on these domestic  
7 Supreme Court decisions in this context.

8 MR. WARD: I'm not sure I understand what he means  
9 by that, but I thought the answer was completely  
10 non-responsive to the very limited question of: Let me  
11 clarify this. That was the question.

12 So I believe the answer, for most of it, if not  
13 all, was not responsive.

14 THE COURT: Overruled. Just go and get the  
15 thought out that you want to get out.

16 Q Professor, why not? Why can't you apply that case law  
17 or that decision?

18 A The Turkish court decisions, on both sides, which  
19 allows or not allows, is about domestic cases. When it  
20 becomes an international case, the Turkish Supreme Court  
21 always applies Hague child abduction convention.

22 Internationally custody case, Turkish courts never  
23 applies Turkish civil court rules, we apply Hague Convention  
24 rules.

25 As I explained at the beginning, according to our



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1 constitution, international conventions, agreements, have a  
2 clear application against our domestic courts or acts.

3 So if you are talking about the child abduction  
4 situation, a Turkish Supreme Court never relies on civil  
5 court, it relies on child abduction convention.

6 That's why --

7 THE COURT: Do you have anything else?

8 THE WITNESS: -- we can't use it.

9 THE COURT: I got that.

10 Do you have anything else, Mr. Min?

11 BY MR. MIN:

12 Q Yes. You had testified earlier that your opinion was  
13 that Mr. Tatari, the father, was not able to take the child  
14 or relocate the child outside of Turkey, even though it does  
15 not state so explicitly in the divorce decree.

16 What was the basis of that statement, and what's  
17 the basis of your opinion?

18 A Because in the divorce decree, paragraph 3.2 states  
19 that the child will only go to the schools in Istanbul. The  
20 parties mutually agree to that, and the court decided that.  
21 The child will go to the specific schools in Istanbul. And  
22 any parent has a right to change it, change this school,  
23 without another party's consent.

24 So if they decide that the child will go to school  
25 just in Istanbul, and no party has a right to change it

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1 without the other's consent, there is no need to write  
2 another sentence for this situation. So it's way practical  
3 for the courts.

4 MR. MIN: No further questions.

5 THE COURT: Okay. I think we're done?

6 MR. WARD: Yes.

7 THE COURT: Okay.

8 Thank you, Mr. Huysal.

9 THE WITNESS: Thank you, Your Honor.

10 THE COURT: You can go to bed now.

11 THE WITNESS: Okay. Have a nice day.

12 THE COURT: Yes. Okay.

13 Do you have another witness?

14 MR. MIN: We could -- Your Honor, what time does  
15 Your Honor plan to go to?

16 THE COURT: We can go until at least 5:30.

17 We can call Mr. Mert Yalcin.

18 (Pause in the proceedings.)

19 THE COURTROOM DEPUTY: Sir, raise your right hand.

20 (The witness takes the witness stand.)

21 **MERT YALCIN, called as a witness, having been**  
22 **first duly sworn/affirmed, was examined and testified as**  
23 **follows:**

24 THE WITNESS: I do.

25 THE COURTROOM DEPUTY: Please state and spell your

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1 name for the record.

2 THE WITNESS: Mert Yalcin.

3 THE COURT: Spell it, would you, please? Spell  
4 your name.

5 THE WITNESS: It's, M-E-R-T, Mert, Y-A-L-C-I-N.

6 THE COURT: Thank you.

7 THE COURTROOM DEPUTY: And just pull the  
8 microphone close to you.

9 MR. MIN: May I have a moment just to set up.

10 (Pause in the proceedings.)

11 THE COURT: Are you ready to inquire?

12 MR. MIN: Yes.

13 Your Honor, if I may inquire?

14 THE COURT: Yes.

15 DIRECT EXAMINATION

16 BY MR. MIN:

17 Q Good afternoon, Mr. Yalcin.

18 A Good afternoon.

19 Q What is your current occupation?

20 A I am the managing partner of the law firm Yalcin &  
21 Toygar.

22 Q And where is that firm located?

23 A It is based in Istanbul, Turkey.

24 Q And how long have you been with that firm?

25 A I am that firm around 13 years.

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1 Q Okay. And how long have you been an attorney?

2 A Twenty-four years, since 2001.

3 Q And what sort practice are you in as an attorney?

4 A I deal international family law mainly, especially  
5 since after 2005 this became my core practice.

6 In 2008, I was sent to the states by Department of  
7 States for international child abduction cases.

8 And 2012, I became the first fellow of IAFL,  
9 International Academy of Family Lawyers.

10 And I'm still in this practice, and I do mostly  
11 Hague cases, high-profile divorce cases, all international  
12 and family law matters.

13 Q You said you became the first fellow in the IAFL from  
14 Turkey?

15 A Correct.

16 I am, at the moment, first one, the only one, from  
17 Turkey.

18 Q Okay. And that's the International Academy of Family  
19 Lawyers?

20 A Yes, correct.

21 Q And what is the International Academy of Family  
22 Lawyers?

23 A This organization is the top-level organization of  
24 lawyers, which you become a fellow with your practice, and I  
25 became a fellow through my international experiences and

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1 with the referral of my international connection in that  
2 field.

3 And also during that time, since 2012, I have a  
4 chance to contribute to Thomson Reuters Blue Book, which is  
5 on international and family law.

6 I also contributed to Chambers and Partners on  
7 international location and international divorce.

8 And I have a chance to participate in a number of  
9 on contracts on the Hague 1980 and international family law  
10 practice in Turkey.

11 MR. MIN: I'm going to pull up a document that's  
12 been premarked as Petitioner's Exhibit 31.

13 THE WITNESS: Your Honor, I can't see the screen.

14 THE COURTROOM DEPUTY: One moment.

15 Are you using the lecturn?

16 MR. MIN: Sorry. I'm happy to use the ELMO.

17 THE COURTROOM DEPUTY: Okay.

18 MR. MIN: Thank you.

19 Thank you.

20 Q Do you recognize this document?

21 A Yes. This is the memorandum that I typed up back in  
22 September 2024.

23 Q I'm really going to go to the last couple of pages,  
24 starting with what's been Bates stamped as 636.

25 Do you see that? Do you recognize this document?

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1 A Yes. This is my CV.

2 Q Okay.

3 MR. WARD: No objection to it coming into  
4 evidence.

5 THE COURT: The entire document? I think -- is  
6 this the witness' report?

7 MR. MIN: Report and the CV is annexed to it.

8 THE COURT: So why don't you move the admission of  
9 the entire document.

10 MR. MIN: Okay.

11 THE COURT: Which number is it?

12 MR. MIN: 31, Your Honor.

13 THE COURT: All right, 31 will be received.

14 (Petitioner's Exhibit 31 was received in evidence.)  
15  
16  
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1 (Continuing.)

2 BY MR. MIN:

3 Q Have you ever testified as an expert witness?

4 A Yes. I had a chance to participate in different  
5 countries' Family Court, from Canada, USA, Australia, U.K.,  
6 Dutch courts, some Swedish courts, German and French courts,  
7 and a chance to participate either in person as an expert  
8 witness then, and also I provided my written expert opinion  
9 on such file.

10 Q On what issues have you given your expert testimony or  
11 expert reports across the world?

12 A Well, in my professional career, I had a chance to  
13 participate in the very first examples of Hague 1980  
14 application in Turkey, which was back in 2005. Then it  
15 became one of my major practices. So I am Mr. Hague for the  
16 expert witness stand, and most of the time I provide my  
17 statement in Hague 1980 from Turkish prospective, and I'm  
18 able to put Turkish practice accordingly.

19 Q And how many times have you testified across the world  
20 on the topic of 1980 Hague Convention?

21 A I cannot recall my exact number, but I can say more  
22 than ten. This is around the world, in Turkey. I also  
23 advise the Family Court judges, and also from time to time  
24 we have conferences, seminars, so I am able to participate  
25 in these to train new fellows, new associates, and new bar

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1 members.

2 Q Have you ever testified before a U.S. court --

3 A Yes.

4 Q -- on this topic, 1980 Hague Convention?

5 A Yes.

6 Q Do you recall how many times you've done that?

7 A About, let's say, three -- five times.

8 Q You're a practicing attorney in Turkey, right?

9 A Correct.

10 Q And I think you said since 2005 you've been focusing on  
11 international family law?

12 A Correct, international family law.

13 Q Yes. Have you handled many Hague cases, 1980 Hague  
14 cases in Turkey?

15 A A lot.

16 Q When you say "a lot," how many, approximately, would  
17 you say?

18 A More than -- I mean, with the expert opinions, I can  
19 say more than hundreds to date. For example, at the moment  
20 I handle seven different Hague files in Turkey at the moment  
21 as a counsel, and I can tell you more than hundreds.

22 Q So you're including obviously those in which you acted  
23 as a consultant as an expert, right?

24 A Yes, correct.

25 Q So I'm curious, how many Hague cases have you handled



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1 in Turkey where you were the lawyer involved, the litigator?

2 A More than 50.

3 Q Were you asked to provide an opinion as part of this  
4 case?

5 A Yes, correct.

6 Q And what were you asked to provide an opinion  
7 regarding?

8 A I am asked to provide my opinion especially on  
9 provisions on joint custody law and its application in  
10 Turkey.

11 Q And did you form an opinion as part of the process here  
12 today?

13 A Yes.

14 Q And what was your opinion?

15 A Well, again, Turkish custody law principles based on  
16 two section, as Professor Huysal detailed in his testimony.  
17 We have Turkey civil code, which rules the internal  
18 procedures between Turkish citizens and both domestic cases.  
19 And also we have conventions, and Hague 1980 is one of  
20 these, such as Hague 1960 and '96. And those conventions  
21 became an internal legal courts as per the Article 90 of  
22 Turkish Constitution, and the same clause stating that if  
23 there is a conflict between the internal court, for example,  
24 Turkish Civil Court, and the foreign convention, then  
25 international convention rules are taken into consideration.

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1 This is the Article 90 of Turkish Constitution.

2 Related to that, we have signed, and then in 2016  
3 European Convention on Human Rights became an internal rule  
4 as after it is published in official gazette, which is  
5 requirement to adopt foreign legal principles into Turkish  
6 law. After 2016 especially, we started to see real  
7 application of joint custody regulations as per the  
8 convention. And before that, I remember a decision back in  
9 2009 from court ^ . Of course with the parties agreement,  
10 the Court decided to put joint custody regulations, and of  
11 course that was really first application.

12 But after 2016, as the joint custody regulations  
13 became an internal part of the law, we started to see  
14 different court orders organizing these joint custody  
15 regulations. In my practice, I have a chance to apply these  
16 principles to some of my clients, and I already shared this  
17 information with your Honorable Court, with the current  
18 references that ongoing relations between my previous  
19 clients.

20 So, yes, there's a joint custody in Turkey. Yes,  
21 there's ongoing cases and ongoing decisions related to that.

22 Q Okay. You noted that there was a case as far back as  
23 2009 where a court granted joint custody to the parties; is  
24 that correct?

25 A Correct.

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1 Q And what was the basis for a court in 2009 granting  
2 that joint custody?

3 A Well, there's a really thin red line on divorce with  
4 settlement, with noncontesting divorce in Turkey. The judge  
5 is not public notary. So this is not about the approval of  
6 the agreement between the parties. The judge, as per public  
7 law principles, involves into the agreement that hearing  
8 what the parties talked in this decision back in 2009. The  
9 judge has got a very special expert report, and the child  
10 was in need of special treatment, so the expert stated in  
11 the report that the child needs both parties' participation  
12 in the life of a child.

13 Afterwards, this Judge made a very significant and  
14 important decision for Turkish legislation and moved us to  
15 joint custody regulations.

16 Q So in 2009, you would agree that the Turkish Civil  
17 Code, looking at the Turkish Civil Code by itself in a  
18 vacuum, does not provide for joint custody; is that correct?

19 A Correct. The real -- the real application of European  
20 Convention on Human Rights started from 2016. That's real  
21 timing of real joint custody application regulations.

22 Q Since 2016, in your practice as a lawyer in Istanbul,  
23 Turkey, have you seen joint custody be awarded in divorce  
24 cases in custody cases?

25 A A lot. And as a counsel, I have a chance to deal with

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1 such cases. I have a chance to deal with such cases. It is  
2 very trendy at the moment between the parties, especially  
3 who wants to be active in their children's life, they  
4 started to pick the joint custody regulations, and we can  
5 see different type of regulations under joint custody  
6 management.

7 Q Can you explain the process by which parties come to an  
8 agreement and execute a joint custody provision that becomes  
9 a divorce decree?

10 MR. WARD: Objection to the foundation, Your  
11 Honor.

12 THE COURT: Overruled.

13 Q Go ahead.

14 A Well, in order to move along with the divorce, with  
15 settlement, there should be a signed settlement agreement  
16 between the parties. Normally what we have, counsel  
17 involving into negotiations and reach an agreement and both  
18 parties signing this, and we submit it to Court and asking  
19 the judge to check the protocol and approve it under Turkish  
20 law.

21 So then after this application by the parties,  
22 because the claimant must submit a copy of the signed  
23 protocol to the divorce file, and then the judge wants the  
24 parties for a hearing. Most of the time the hearing is in a  
25 really short time because there is no dispute and the

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1 parties already agreed on specific conditions.

2           So the judge is calling the parties in for a  
3 hearing and hears and also reads what is in the protocol.  
4 Of course, if there's a common child, the evaluation should  
5 be done very carefully. Then after reviewing the protocol  
6 conditions and asking the parties statements, then the judge  
7 finalize the hearing and decides the verdict by sometimes  
8 directly copying the conditions by the parties. Most of the  
9 time the judge intervenes and get into detail, and if  
10 there's any need to change in the agreement, we see that  
11 reflection in the final decision.

12           For example, the -- I mean, I can tell you with my  
13 practice and my own clients, not related with that file, in  
14 the same courthouse, because Beykoz Family Court is very  
15 famous with the divorce, with the settlement, especially  
16 with the public people. It is quick and we are able to get  
17 an early hearing date. I have seen a case in the same  
18 courthouse, and the judge didn't let us to discuss on a wide  
19 personal visitation schedule. She said, okay, I understand  
20 your concerns, but I'm going to stick on Supreme Court  
21 decision, which is every two weeks in the weekends, a  
22 semester all day a week, and a month during the summer  
23 holiday. So besides that, she approved all the agreements  
24 between my client and counterparty. That's an example.

25           So the judge is not a public notary and it is not

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1 automatic approval on the signed conditions. The judge  
2 intervenes, the judge checks what is agreed, then the final  
3 decision goes along.

4 If one of the parties is not happy with the  
5 decision, because we see that too in practical life, this  
6 party has a right to appeal it. This means that with the  
7 appeal, you are able to change the case from noncontest to  
8 divorce with contest and appeal court reverse the decree,  
9 and the parties need to start from scratch to submit their  
10 claims and demands with the exchange of the submissions.

11 So those are the basics, Mr. Min.

12 Q So you're talking about a divorce, an uncontested  
13 divorce versus a divorce with contest, which I assume means  
14 a contested divorce, right?

15 A Correct.

16 Q Two different types of proceedings?

17 A Correct.

18 Q In this case, with this family, were you able to view  
19 the Beykoz Family Court divorce decree?

20 A While I was drafting my opinion.

21 Q Okay. So --

22 A Yes, I saw it, of course.

23 Q And was that the result of a contested or an  
24 uncontested divorce process?

25 A It is a result of uncontested divorce protocol.

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1 Uncontested divorce case fit the protocol.

2 Q So your testimony is that a judge, unlike a notary  
3 public, a notary, has to view the agreement, or the protocol  
4 as you call it, and see if it's against public policy,  
5 right?

6 A To rule the file, it is mandatory under Turkish civil  
7 law to provide a signed agreement which consist of parties'  
8 full agreements on the custody, financial composition,  
9 acquire of property regime dissolution fundamentals. This  
10 is something you have to file with the first submission  
11 because you start your filing by sharing this with the  
12 judge. That's the beginning of the filing. Otherwise, your  
13 application will be just dismissed without any proper --

14 Q The judge is not under any obligation to accept  
15 everything that the parties agreed to, correct?

16 A Of course. The public law principles is mandatory.  
17 The judge represents the public, and every condition should  
18 be revised accordingly.

19 Q When you were drafting your report, did you do any  
20 research, review any publications, review any court  
21 decisions that guided you or helped you formulate your  
22 opinions?

23 A Yes, of course, of course.

24 Q I want to direct your attention to a document that's  
25 been pre-marked as Exhibit 32.

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1 MR. MIN: You know what? That's a cue for me to  
2 do something, which is put it up on the screen.

3 Q Let me know if you see this document.

4 (Exhibit published.)

5 A Yes, I see it.

6 Q Is this something that you reviewed in preparing your  
7 expert opinion?

8 A Yes, of course. Especially the decision that I  
9 referred, Second Civil Chamber of Supreme Court, which is  
10 related to Family Court, yes.

11 Q And are you aware of that decision?

12 A Yes.

13 Q Okay. What is that -- you don't have to look at it.  
14 I'm asking you about that court decision that you're  
15 speaking about.

16 What does that court decision speak to with  
17 respect to joint custody in Turkey?

18 MR. WARD: Objection, Your Honor. I believe he's  
19 referring to a document not in evidence.

20 THE COURT: I don't know that the question  
21 pertains to this document.

22 MR. MIN: Right. I'm asking him about a case that  
23 was referenced in this document, but the question is now  
24 about that case that he just talked about.

25 MR. WARD: Oh. It wouldn't have to be on the



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1 screen anymore if he's just talking about --

2 MR. MIN: I just told him he doesn't have to look  
3 at the document.

4 MR. WARD: Can we take it down now so he can  
5 testify independently?

6 Thank you.

7 Q You said the Second Civil Chambers of the Supreme Court  
8 case?

9 A That's the special chamber which deals with Family  
10 Court files. In Supreme Court, there are different  
11 chambers. Second Civil is the authorized one for the family  
12 law cases. That's why all decisions that we see are coming  
13 from the same chamber.

14 Q Okay. What was it about this decision that was  
15 pertinent or relevant to your legal opinion?

16 A Well, this is a -- I have a chance to participate in  
17 that file in person. So I was one of the counsels. It is  
18 one of the very first examples of application of European  
19 Convention on Human Rights, and there is a direct referrals  
20 by the Supreme Court and also there are some direct  
21 referrals to United Nations Child Convention, which again  
22 Turkey is a party to. So we started to see a real legal  
23 grant of the joint custody regulations in Turkish  
24 legislation.

25 Q Was that a case in which joint custody was in effect?

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1 A Well, the local court dismissed the case as there  
2 cannot be a joint custody under Turkish public law  
3 principles. And after European Convention on Human Rights,  
4 the meaning of international element in the said divorce  
5 decree, and in the meaning of the joint custody regulations  
6 agreed by the parties, Supreme Court made a historic  
7 decision.

8 Q And the decision was what? Just to be clear.

9 A The decision was about apply the joint custody  
10 regulations agreed by the parties.

11 Q And so the Supreme Court acknowledged that joint  
12 custody was a possibility in Turkey? It was not against  
13 public --

14 A Better word, is it's not acknowledged. After 2016, it  
15 became an internal part of our legal principles. So it is  
16 there, and Supreme Court started to apply the convention  
17 rules properly because Turkey started to apply the  
18 conventions.

19 Q In Turkey, what does having sole custody signify with  
20 respect to decision-making authority?

21 A Well, under Turkey civil court, during the marriage the  
22 custody is used by the parents jointly. And in terms of  
23 divorce, one of the parties is entitled the custody of  
24 right, and other party is entitled to get the visitation  
25 order. This is the general principle of Turkey civil court.

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1 And in Turkey civil court itself, there is no joint custody  
2 regulation. Everything is drafted as per the sole custody  
3 regulations. This is what Turkey civil court directs us as  
4 a practitioner.

5 Q But I think my question is more, what areas of a  
6 child's life does someone with sole custody have the right  
7 to make decisions on?

8 A Well, Professor Huysal put very good examples. Again,  
9 it has four legs. The child custody is about deciding the  
10 child's education, health, financial, and living decisions.  
11 There are four legs. And the custody and parent should obey  
12 the general principles on applying the custody law.

13 Q I'm going to direct your attention to a document that's  
14 in evidence as 29.

15 A I cannot see it.

16 Q I'm going to put it on -- I believe it's subject to --

17 MR. WARD: It's not in evidence. It's being used  
18 on the condition it gets into evidence.

19 THE COURT: Yes.

20 MR. MIN: Fair enough.

21 Q You're familiar with paragraph 3.7, 3.8 of this divorce  
22 decree?

23 A Yes.

24 Q And does paragraph 3.7 here signify to you whether or  
25 not this is a joint custody or a sole custody arrangement?

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1 A This is typical regulation that we put into settlement  
2 agreements on the joint custody regulations. From time to  
3 time parties will agree only the education or health or this  
4 might cover everything such in that protocol. So this the  
5 standard usage of joint custody regulations among the  
6 lawyers. And I also referred to four different cases with  
7 almost the same regulations, which we apply joint custody in  
8 Turkey.

9 (Continued on the following page.)  
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1 (Continuing.)

2 BY MR. MIN:

3 Q You say this is fairly typical or you say this is  
4 typical in divorce agreements in Turkey. Have you seen such  
5 provisions in your practice?

6 A Again, joint custody regulations should be carefully  
7 read by the judge because it is related to child's future  
8 life and the judge needs to make sure that this covers  
9 everything for the best interest of a child. This is  
10 always, European and United Nations Children Convention  
11 refers. So yes, we have different application, but this is  
12 a really standard form of such agreements. So the parties  
13 will be jointly decide on schooling and if Neva Durust  
14 Tatari would like to live abroad that will be need of  
15 Mr. Tatari's approval and of course opinion.

16 And also, this also goes to regulation with  
17 health. And in this protocol specifically it is underlined  
18 that the child will go to school in Istanbul. And that's  
19 also agreed condition. And in this protocol parties decided  
20 to put the school names, namely --

21 THE COURT: Where why don't you make reference to  
22 the provision you're talking about. Can you put that  
23 provision on the screen?

24 THE WITNESS: 3.4.

25 THE COURT: You're talking about 3.4?

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1 THE WITNESS: Yes, your Honor.

2 A I mean, this is not a standard form that we use. It is  
3 much more detailed about parties intention for the best  
4 interest of a child. I also have a daughter and I know that  
5 Enka school, Hisar school, Koc school and Pierre Loti are  
6 the top schools in Istanbul. That's the intention of the  
7 parties, so the parties agree that the child will go into  
8 that level of school. So that's giving the example that the  
9 parties will follow this as a road map for child's  
10 education. According to the document that I reviewed, the  
11 child already got acceptance to Koc school, which is the  
12 third school, in this article. He is fully registered by  
13 paying the tuition and all that stuff.

14 Q So you have seen parties present the divorce protocol  
15 to a family court judge in Turkey, correct?

16 A It is mandatory; without that we cannot talk divorce  
17 with settlement.

18 Q And you've seen a Turkish family court judge reject  
19 provisions in the divorce protocol, correct?

20 A Correct.

21 Q And if a court, if a judge rejects a certain provision  
22 of a divorce protocol, that would be reflected in the final  
23 divorce decree?

24 A What happens is the judge advising parties orally to  
25 find a way time to time. Because the judge, again, is not a

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1 public notary. And judge presence is important to apply the  
2 Turkish public law principles duly for the best interest of  
3 a child, especially during the cases that child involves.  
4 Those are the hard cases that the judge really needs to get  
5 in, and time to time we see different cases that part to  
6 party is forced to sign the protocol and forced to go into  
7 divorce with settlement. In that case, the judge feeling  
8 that one of the parties is forced to do that, and  
9 immediately stops the case and rule that this case should be  
10 removed to divorce with consent, for example.

11 So, yes, the judge really needs to intervene with  
12 the agreement and really needs to read and participate while  
13 he or she will be drafting the verdict.

14 And from time to time I personally experienced  
15 that the judge changes the agreement. It's not  
16 automatically copying and pasting the agreement. No.  
17 That's the usual procedure.

18 Q But if the judge changes the agreement, it would be  
19 reflected in the divorce decree, correct?

20 MR. WARD: Objection. Leading and speculating.

21 THE COURT: Overruled.

22 A We have to clarify one very important point because it  
23 is missing. Divorce decree is the document in that case  
24 from the secret to down we see the divorce decree. Okay.  
25 It's a full decision. However, verdict starting from point

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1 1 is the core of this order. Within that, yes, the judge is  
2 writing down the final decision agreed by the parties.  
3 Again, if one of the parties will not agree on that, and  
4 might challenge that okay I don't agree with your  
5 proposition, your Honor. And then, the judge will say,  
6 okay, ladies and gentlemen, there is no agreement in this  
7 courtroom. So I overrule the judgment from non-contested to  
8 contested.

9 If the parties reaches an agreement, then it's a  
10 basic sign-off agreement. And the judge is writing the  
11 verdict properly according to parties' final agreement  
12 revised by the judge. This is the process. I tried to be  
13 more generic.

14 Q I think that was very clear. The verdict, as you call  
15 it, starts with Article 1; is that correct?

16 A I can show it to you, if you scroll up. There you go.  
17 Starting from: Decision for the reasons described above,  
18 with the acceptance of the action this is going to be a  
19 general acceptance of the general agreement between the  
20 parties.

21 Then the details are put down after.

22 Q Let's go through that. So the decision is paragraph  
23 one, paragraph two, yes, is part of the verdict or decision?

24 A Correct, correct.

25 Q And then paragraph three, yes?



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1 A Correct.

2 Q Paragraph four?

3 A Four, yes.

4 Q Which includes the protocol language?

5 A For example, I may comment personally. The visitation  
6 dates agreed in that protocol is a very good example of  
7 applying joint custody rules because the judge decided to  
8 freely, parties to involve as much as they can in the  
9 child's life, so the judge let the parties agree on that.  
10 In my previous experiences, as I said in the same  
11 courthouse, the judge didn't accept and said I'm not going  
12 to apply that.

13 Q And so going on to page that's been Bates stamped 588,  
14 this is continuing on with the verdict or decision?

15 A Correct.

16 Q And can you tell me where the verdict or decision ends?

17 A After: 7. The litigation costs.

18 And: The decision was read aloud and explained in  
19 accordance with procedure in the presence of the parties and  
20 their attorneys and made clear that the appeal can be filed  
21 within two weeks.

22 So it is the final point of the verdict.

23 Q So the decision starting from one to now was read aloud  
24 in the presence of the parties and their attorneys. Is that  
25 your experience of what happens in family court?

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1 A Yes. Everybody stands up and the judge is repeating  
2 the agreed conditions. And then the clerk is typing down.  
3 And as you can see there is an E-sign of the clerk and the  
4 judge. And during the means of hearings of parties also  
5 sign the paper. Because it's an agreement, so if there is a  
6 revision or what, because if the parties personally present  
7 in the courtroom and participate in the discussions between  
8 the judge there is a signature point for parties and their  
9 counsels. So I'm sure in the means of hearing there are  
10 four signatures along with the clerk and judge.

11 Q It also says that an appeal can be filed within two  
12 weeks?

13 A Yes.

14 Q Is that typical?

15 A Yes, this is procedure law principle. Each party has a  
16 right to appeal the decision.

17 Q In this case are you aware if either party filed an  
18 appeal?

19 A No. This is the finalized decree among the parties.

20 Q I'm going to show you a document premarked Petitioner  
21 49. I don't believe this will be controversial, but are you  
22 familiar with this?

23 A Yes.

24 Q What is this?

25 A It's Hague 1980. It's the convention related to that

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1 file.

2 Q I'm going to direct your attention to Article 5 of The  
3 Hague Convention.

4 Your Honor, I'm not offering this, but Mr. Ward  
5 has a problem me showing The Hague convention to the  
6 witness.

7 MR. WARD: I don't mind him relying on it.

8 THE COURT: Is there an objection to at least  
9 Article 5 of the document coming in?

10 MR. WARD: I don't have an objection. If he's  
11 offering it --

12 THE COURT: Then we'll receive Article 5 and you  
13 can ask him.

14 That's the only relevant provision as far as the  
15 parties are concerned?

16 MR. MIN: It all should be read in conjunction  
17 Articles 3 and 5 work together.

18 THE COURT: I'll receive it. It's The Hague  
19 Convention of Petitioner 49, I'll receive it into evidence.  
20 Ask whatever you want to ask.

21 (Petitioner Exhibit 49, was received in evidence.)

22 BY MR. MIN:

23 Q You're familiar with Article 5 The Hague convention?

24 A Yes.

25 Q It states, I'll focus on 5A for the purposes this

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1 convention, quote, "rights of custody," end quote, shall  
2 include rights relating to the care of the person of the  
3 child and in particular the right to determine the child's  
4 place of residence.

5 When you consider rights of custody under Turkish  
6 law, are rights of custody solely limited to the ability of  
7 a parent to determine where a child lives? Is that the only  
8 right of custody that exists?

9 A Well, as I informed you, the right of the custody is  
10 either Turkish civil court or either European Convention of  
11 Human Rights. So related to that, in our example with the  
12 current decision, the right of a custody is used by both  
13 parties as per the joint of custody agreement between  
14 Mrs. And Mr. Tatari. So if there is an abduction case,  
15 abduction from Turkey and New York, and the left behind  
16 parent was not able to exercise either custody right and  
17 visitation right properly, so the application is 100 percent  
18 fits under Article 5.

19 Q And so if, hypothetically, the parents share a joint  
20 right to make joint decisions about a child's schooling,  
21 let's take that as the premise. A parent removes the child  
22 from Turkey to another country preventing the parent left  
23 behind in Turkey from participating in that decision-making  
24 process of selecting schools, would that be a violation of  
25 the left-behind parents --

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1 A Of course, Mr. Min. As I informed you earlier, there  
2 are four legs. If you are talking about custody  
3 regulations, joint custody regulations, which is widely  
4 drafted in the said agreement. Widely, it is a standard  
5 usage of joint custody regulation. Even the name of the  
6 schools are mentioned in this decision, so of course.

7 Q Is there anything in the parties divorce decree as far  
8 as you've reviewed that prohibits the mother from traveling  
9 outside of Turkey?

10 A For the travel, there is no restriction. For the  
11 relocation there is a restriction. That's a very thin line.  
12 It of course depends on how you read it, but with the joint  
13 custody regulation it is decided that the child will be  
14 under the custody of Mrs. Tatari. This means that  
15 Mrs. Tatari will be able to freely travel with the child.  
16 However, if there is a location issue arises out of the  
17 dissolution of marriage, this is something that has to be  
18 done jointly. This is also openly written in the divorce  
19 decree under 3.7.

20 MR. MIN: I'm going to show you a document. If  
21 Mr. Ward can remind me what the judgment this morning was  
22 premarked as?

23 MR. WARD: L3.

24 MR. MIN: Thank you, counsel.

25 BY MR. MIN:

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1 Q I'm going to show you a document that's been previously  
2 marked as L3. I'm showing you the Turkish language version.  
3 Are you familiar with this document?

4 A Yes.

5 Q I'm going to, for completeness, show you the last page  
6 as well. What do you understand this document to be?

7 A It is an interim decision made under the protection of  
8 child's property case. And within that decision Mr. Tatari  
9 asked to put a travel ban on a child he was, according to  
10 the statement and this decision, he asked to put the travel  
11 ban on child's travel to prevent possible abduction,  
12 possible moving, and also asked the court to send an order  
13 to relevant authorities, including U.S. embassy and U.S.  
14 consulate in order to prevent issuing the passport for a  
15 child because that's the -- this file is merged under  
16 Turkish law is if there is a common sense on ruling to file,  
17 the judge is able to merge them, and in that file we see the  
18 affect of this original, the file is about protection of  
19 child's assets. It has nothing to do with the passport  
20 case. It seems like the judge merged these two files, and  
21 there is a decision about not issuing a travel ban,  
22 referring that there is no custody claim in that file. And  
23 as per the divorce decree there is no preventing rule the  
24 travel of the mother, it doesn't refer anything about the  
25 location in that decision.

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1 Q From your review of this document, and this order, did  
2 the court grant the father's request to --

3 A No.

4 Q Hold on --

5 A Simply, simply rejects it by referring that there is a  
6 need of change of a custody case. And according to  
7 documents that I reviewed related to that file, the judge is  
8 calling the change of the custody file. And after seeing  
9 that, the judge simply doesn't want to touch about the  
10 custody related issues. That's why there is a left open  
11 conditions referring to travel of a child only, which is  
12 already on Mrs. Tatari. So there is nothing to decide on  
13 that and there is a rejection.

14 MR. WARD: Objection. Anything to what the judge  
15 thought is pure speculation.

16 THE COURT: I'll sustain the objection to what the  
17 judge thought.

18 BY MR. MIN:

19 Q Mr. Yalcin, my question is whether or not in your  
20 expert opinion as a practitioner in these courts in Turkey,  
21 whether this order is an order recognizing that the mother  
22 has the right to relocate with the child overseas?

23 A No, it's about the travel, and prevention of further  
24 travels. That's all.

25 MR. MIN: No further questions.

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1 THE COURT: Let's finish with this witness.

2 CROSS-EXAMINATION

3 BY MR. WARD:

4 Q Sir, are you being paid in this case as an expert?

5 A Yes.

6 Q Because the disclosure made by your attorney with  
7 respect to your compensation was that you weren't being paid  
8 as an expert, but instead you were simply representing  
9 Mr. Tatari in Turkey as his lawyer. So which is it?

10 A I didn't get paid for the expert fees. But of course I  
11 hold the representation and I got the payment on the very  
12 first meeting. But it's not about report.

13 Q I'm not sure I understand what you just said.

14 A I didn't get paid for the expert report, but I had the  
15 payment for consultation.

16 THE COURT: Consultation on what?

17 THE WITNESS: Well, we had a meeting my office and  
18 he --

19 THE COURT: You don't have to tell me about what  
20 you said. What was the subject matter?

21 THE WITNESS: About international custody law and  
22 Hague Convention. And I informed Mr. Tatari about aspects  
23 and how the way we apply that. I got the payment out of it,  
24 of course, I don't do free pro bono.

25 BY MR. WARD:



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1 Q If you could in terms of U.S. dollars, even if that's  
2 not the currency you received, how much did you receive for  
3 that consultation?

4 A I don't know. But it's hourly fee so I think he paid  
5 around 3,000, 4,000.

6 Q Are you saying that's the only money you received for  
7 your participation in this trial?

8 A Yes, yes.

9 Q And --

10 A And also of course they covered my travel expenses and  
11 accommodation expenses for New York normally.

12 Q How long is your plan to stay here in New York?

13 A Of course it depends on the hearing schedule. I'm  
14 flying back on Saturday.

15 Q When did you arrive?

16 A Monday night.

17 Q I want to be clear about something with your testimony.  
18 You don't dispute that Article 3 of the Hague Convention  
19 requires when determining rights of custody to look to the  
20 local laws of the place where the child was removed, right?

21 A Correct.

22 Q You also don't dispute that rights of visitation cannot  
23 trigger a return of a child under the Hague Convention,  
24 correct?

25 A No, it's not correct. It is a part of the visit of the

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1 joint custody right. This is the agreement that parties  
2 reach in the separate accord. Of course, it is related to  
3 Mr. Tatari's personal visitations as well.

4 Q Are you saying --

5 A In such case, there should be a relocation case while  
6 she was living in Turkey. After abduction, she filed a  
7 change of visitation dates case.

8 Q Are you saying that the United States court, this  
9 Court, can return the child to Turkey simply because  
10 Mr. Tatari had visitation rights under the parties' divorce  
11 decree?

12 A No, I'm not saying that.

13 Q Okay. Because he couldn't, the court couldn't based on  
14 that, correct?

15 MR. MIN: Objection. This witness is not a legal  
16 expert.

17 THE COURT: Overruled.

18 A Again, there are different aspects while we apply for  
19 Hague 1980. The protocol itself is clear about the approval  
20 of Mr. Tatari about location, this is point one. Point two,  
21 the schooling of the child.

22 MR. WARD: Your Honor, I move to strike. I asked  
23 a simple question about visitation rights, not the  
24 schooling.

25 THE COURT: I think the question was about that

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1 portion.

2 THE WITNESS: I understand, your Honor, but it is  
3 not about one sentence reply. Because in Turkish law if you  
4 are talking about custody, this is not only about approval  
5 of Mr. Tatari. It is about the choosing the school, it's  
6 about --

7 THE COURT: He just asked you about whether  
8 visitation rights standing alone.

9 THE WITNESS: Yes, yes of course. It is one of  
10 the effects, correct.

11 BY MR. WARD:

12 Q I'm not sure I understand your question. Is the fact  
13 that a party has visitation rights alone under a divorce  
14 decree, allow a Hague court to return that child?

15 A It is solely it is not allowing. There should be other  
16 circumstances.

17 (Continued on next page.)

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1 CROSS-EXAMINATION (Continued)

2 BY MR. WARD:

3 Q Okay, thank you.

4 Have you ever appeared on Mr. Tatari's behalf in  
5 any Turkish cases?

6 A I didn't appear any of the court hearings, no.

7 Q Are you doing work for Mr. Tatari on any of the Turkish  
8 cases that are going on right now?

9 A I don't do any work for him, and I didn't consult  
10 anything on behalf of him.

11 Q Okay. So you have not in any way billed Mr. Tatari for  
12 time, other than for that consultation that you had with  
13 him?

14 A Correct.

15 Q All right.

16 So in your -- in the compensation disclosure that  
17 we received from Mr. Tatari's counsel, it states -- and I'm  
18 sorry if I pronounce your last name wrong -- Mr. Yalcin is  
19 representing petitioner in Turkey for the process of  
20 returning the child pursuant to the Hague Convention and is  
21 being compensated for his representation.

22 Was that a misstatement?

23 A Well, it is a very wide statement.

24 If the consultation to collect and enforce, I put  
25 my legal opinion in the -- I put my legal opinion, the first

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1 one, into the Central Authority application the Turkish  
2 Minister of Justice, and my name is there. Of course, my  
3 fee covers the entirety. That's why I didn't charge him  
4 anything after this money.

5 But, of course, my name is under the Central  
6 Authority application.

7 Q Okay, so you did do work for Mr. Tatari for a  
8 submission in Turkey?

9 A Correct.

10 Q Thank you.

11 You were present in the courtroom for the previous  
12 expert's testimony; were you not?

13 A Yes. I was here.

14 Q And isn't it true that the professor said something  
15 about Turkish law with which you very much disagree -- let  
16 me change that, with which you disagree, correct?

17 A Well, can you repeat what he said and what the subject,  
18 and I will make sure that I will give you the right answer.  
19 I don't recognize it.

20 Q He represented to this Court, in his expert opinion,  
21 that a parent who has visitation rights with the child,  
22 cannot relocate to a foreign country under Turkish law.

23 Do you recall that testimony?

24 A Yes, I remember.

25 Q He's wrong about that, correct?

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1 A Well, again, this is my point. We cannot eliminate  
2 this only one subject.

3 THE COURT: Stick with just that one subject.

4 If that's the one subject, was that correct?

5 THE WITNESS: This is from this thing, yes; one of  
6 the things.

7 Q And he was incorrect in his testimony about that  
8 subject?

9 MR. MIN: Objection, Your Honor, that's a  
10 mischaracterization of the evidence.

11 He was citing to a Supreme Court case that he said  
12 sometimes they are contradictory decisions. And he said  
13 this case stated just for the principle, which you could not  
14 relocate if there was visitation in place.

15 That was not his testimony that this was, you  
16 know, the law of the land. And I don't believe the question  
17 is proper.

18 MR. WARD: We don't have the transcript yet, Your  
19 Honor.

20 THE COURT: If he said that, do you disagree with  
21 that?

22 THE WITNESS: Well, I don't disagree, but there is  
23 a missing part of his statement. We have to think why, this  
24 is one --

25 THE COURT: Assuming there's no missing statement,

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1 assuming that he made that statement, that it's simply with  
2 regard to visitation rights. If somebody's been awarded  
3 visitation rights in Turkey, that it violates the custody  
4 rights if they come to the United States with the kid.

5 THE WITNESS: I agree with that comment.

6 So if you want my answer to that, yes, breach of a  
7 personal visitation is one of the reasons on applying the  
8 Hague. Because each case has a different separate, so I  
9 don't think we decide accordingly.

10 Q Sir, I don't believe you answered the question because  
11 this has nothing to do with the Hague.

12 He said it was a violation of custody rights under  
13 Turkish law if a party relocates abroad, oversees, if they  
14 have visitation rights.

15 Is that an accurate statement?

16 A A breach of the visitation right, is it the core of  
17 1980? Is this the question?

18 Q No. I'm asking under Turkish law, does Turkish law  
19 prohibit a party with sole custody from relocating oversees  
20 with the child, if the other party has visitation rights?

21 A Yes, it's a breach of Convention.

22 MR. WARD: Okay, could you bring up his report.

23 Go to the page where it says A10. Right there.

24 Q This is your report, sir, you recognize that?

25 A Yes.

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1 Q True or not, sir, page 10 of the report states the  
2 following:

3 While a custodial parent can relocate to another  
4 country with the child without needing consent of the other  
5 parent, the left-behind parent can apply to the Turkish  
6 court for a reconsideration of custody. This legal action,  
7 known as a change of custody lawsuit, may be initiated by  
8 the left-behind parent, if they can claim that the  
9 relocation constitutes misuse of parental responsibility.

10 Correct?

11 A Correct.

12 Q So, again, in your report, you acknowledge that a  
13 person with custody can relocate, and the mechanism to  
14 challenge that. Okay, it's not a violation when they leave,  
15 the mechanism to challenge it is go to the court in Turkey  
16 and seek a change of custody, correct?

17 A Correct.

18 But this is one of the reasons to file a change of  
19 the custody. In that file is from the submissions. There  
20 are a number of allegations in terms of the change of the  
21 custody.

22 So it's not about only obeying the divorce decree  
23 principals, it's about not having a proper life as a mother  
24 to protect the child's best interest.

25 So there are different aspects in that file on



M. YALCIN - CROSS - MR. WARD

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1 change of the custody. Yes, it is one of the reasons, and  
2 it is one of the points that you may go into a change of the  
3 custody. But are there are so many other arguments in this  
4 change of the custody.

5 Q And I appreciate everything you just said there.

6 But you acknowledged in your report that a  
7 custodial parent can relocate to the other country, without  
8 needing the consent to the other parent, which would  
9 indicate that it's not improper for a parent to relocate to  
10 another country without the consent of the other parent who  
11 has visitation rights, correct?

12 A Yes, correct.

13 Q Thank you.

14 You stated in your testimony that you had seen  
15 joint custody -- leave that out, please -- you had seen  
16 joint custody, I think you said, awarded a lot or agreed to  
17 a lot in your practice.

18 Do you remember that testimony?

19 A Yes.

20 Q Is it true, sir, that in the report that is now in  
21 evidence to this Court, you wrote, and I quote, "Due to the  
22 restrictions and challenges in Turkish law, courts in Turkey  
23 are reluctant to approve joint custody."

24 You wrote that, sir, right?

25 A Yes. Yes.

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1 MR. WARD: I want to take a second, if you could  
2 pull up L3. Put in the English.

3 Q You acknowledge as the professor, the last witness  
4 acknowledged, in presenting his arguments to the court in  
5 July of this year to prevent Ms. Durust from going abroad,  
6 the father spoke about the risk of abduction, correct?

7 A Yes.

8 Q You're familiar with abduction, correct?

9 A Correct.

10 Q Now, you would agree that someone traveling let's say  
11 to Disneyland for two weeks, does not raise the risk of  
12 abduction, correct?

13 A Yes, it's a temporary travel, a joint travel.

14 Q Abduction is a fear that the child is going to be taken  
15 somewhere likely permanently, correct?

16 A Yes, correct for relocation.

17 Q Yes. And he asked the court, because of this fear for  
18 relocation, to not allow her to travel abroad, correct?

19 A Correct.

20 Q Okay.

21 A But --

22 Q And the court rejected that request, correct?

23 A The court rejected that request by meaning --

24 THE COURT: Just to the extent you can do it, just  
25 answer it "yes" or "no".

M. YALCIN - CROSS - MR. WARD

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1 THE WITNESS: Can you repeat?

2 Q The court rejected the request, correct?

3 A Yes.

4 Q And in rejecting the request, the court noted that the  
5 mother has custody, correct?

6 A Correct.

7 Q The Court didn't say under the parties' joint custody  
8 regime, this, that or the other, it said mom has custody,  
9 correct?

10 A Correct.

11 Q That is a finding of the Turkish family court, correct?

12 A I cannot say this is a finding. In the verdict, it is  
13 stating that again. I mean -- may I? Or shall I continue  
14 with the answer?

15 Q If your answer is "no," I'll move on to the next  
16 question. That's fine.

17 A Okay, no.

18 Q No? Okay.

19 The court said, "Due to the mother's custody, she  
20 has the right to go abroad with the child", correct?

21 MR. MIN: Objection, that's not what the document  
22 says.

23 MR. WARD: I'm asking him.

24 MR. MIN: You're implying that that document says  
25 that. I think that's a misrepresentation.

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1 THE COURT: Overruled.

2 A Yes.

3 MR. WARD: Give me one second, Your Honor.

4 (Pause in the proceedings.)

5 MR. WARD: No further questions, Your Honor.

6 THE COURT: Do you have anything further, Mr. Min?

7 MR. MIN: Yes, Your Honor, just a few questions.

8 REDIRECT EXAMINATION

9 BY MR. MIN:

10 Q I am turning to your report, and Mr. Ward was kind  
11 enough to highlight your statement about the reluctance of  
12 approving joint custody in Turkish courts, correct?

13 Do you recall that?

14 A Correct.

15 Q I think Mr. Ward, maybe inadvertently, forgot to  
16 mention the second part of your statement there, so I  
17 wanted to highlight it for you.

18 You talk about the reluctance of Turkish courts to  
19 approve joint custody, right?

20 A Correct. And there are so many reasons behind that.  
21 It's more practical point of judge's consideration that this  
22 convention ruling, in terms of the joint custody, is  
23 something you have to apply by guidance to local judges.

24 And Turkey is a big country, so we cannot say that  
25 we have the same applications in Istanbul. That's the

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1 general frame of the legal structuring problems.

2 Q But you went on to say in the next sentence: "However,  
3 in practice, many courts allow flexible arrangements where  
4 the noncustodial parent still participates in important  
5 decisions. It puts joint custody into practice, although  
6 not in name."

7 A Correct.

8 Q What do you mean by that?

9 A Well, likewise, the conditions agreed between this  
10 case, the parties, I mean the parties are flexible to put  
11 any kind of measures related to the joint children's life.  
12 And there are -- I mean I have seen cases that as the child  
13 was in the special needs, or that was a special needs  
14 preparation classes, which will be decided jointly by the  
15 parties, for example, this related to education, but this is  
16 just an example that this will cover a lot of different  
17 things in order to jointly decide on the child's needs.

18 Q I'm going to show you page 613. I'm just trying to  
19 focus, sir. Here we go.

20 And you wrote, starting at A8: "If one parent  
21 holds full custody, they can take the child abroad without  
22 requiring the other parent's consent," right?

23 A Yes.

24 Q And then A10, down below, Mr. Ward pointed out: "You  
25 stated that a custodial parent can relocate to another

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1 country with the child without needing consent of the other  
2 parent," right?

3 A Correct.

4 Q Now someone who holds full custody, as you stated in  
5 A8; is that right?

6 A Correct.

7 Q Is, in your review of this case, and your review of the  
8 divorce decree, is Ms. Durust a parent that has full  
9 custody?

10 A Correct.

11 Q She has full custody?

12 A Yes.

13 MR. WARD: Objection. Asked and answered.

14 Q So she's able to relocate to another country without  
15 the consent?

16 A Correct.

17 Q Even though 3.7 is in place?

18 MR. WARD: Objection, Your Honor, I didn't go into  
19 3.7.

20 THE COURT: Overruled.

21 A Yes, correct.

22 What do you mean, can you point to?

23 Q 3.7 of the divorce decree.

24 A Current divorce decree?

25 Q Yes.

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1 A Current divorce decree is defining the approval on  
2 relocation.

3 Q But your testimony just now is that she doesn't need  
4 the father's approval?

5 MR. WARD: Objection, Your Honor.

6 THE COURT: Overruled.

7 A I mean you are talking about in the example the wife  
8 has -- the ex-wife has the sole custody.

9 Q No, I asked you if Ms. Durust, the mother here, if she  
10 has full sole custody in this case.

11 MR. WARD: Objecting, Your Honor.

12 A And if she will have full custody, yes, she will be  
13 free.

14 Q I said, does she have sole custody, full custody?

15 MR. WARD: Objection, Your Honor.

16 THE COURT: Overruled.

17 A Related to current divorce part?

18 Q Yes, this particular case.

19 A No, she doesn't have sole custody. She has a joint  
20 custody with Mr. Tatari.

21 Q My question to you, in pointing out A8 is, is the  
22 mother, in this case, in this family, is she the type of  
23 person that you were referring to that had full custody?

24 A No, no, no, no, no, she's not.

25 MR. MIN: No further questions, Your Honor.

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1 THE COURT: Do you have anything?

2 MR. WARD: One.

3 RECROSS-EXAMINATION

4 BY MR. WARD:

5 Q Yes or no, the second line of the order of the divorce  
6 decree states that: Neva Durust Tatari, the mother of the  
7 appointed, has the custody O.T., the biological party of the  
8 child.

9 That's what that agreement says, correct?

10 A Yes.

11 Q Do you recall that?

12 A Yes.

13 MR. WARD: Thank you. No further questions.

14 THE COURT: All right, I have just a brief inquiry  
15 on a separate topic.

16 Mr. Yalcin, you submitted a memorandum to the  
17 Court through counsel on the question the Court had about  
18 referring the matter under Article 15.

19 Do you recall that you submitted that?

20 THE WITNESS: Yes, Your Honor.

21 THE COURT: And you said that there is nothing  
22 specifically mentioned in Article 15 applications, that  
23 simply put, there's no legal basis for an Article 15  
24 application in Turkish courts. You said that.

25 THE WITNESS: Yes, this is directive of the



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1 Turkish court, however, this is a special request defining  
2 the context of the custody and this might go to a Central  
3 Authority.

4 THE COURT: What --

5 THE WITNESS: I mean the Central Authority in that  
6 party is a party of the procedure. So while -- what might  
7 can be done is to check this with Central Authority. But  
8 there's no such case which goes to judge and the judge makes  
9 a decision.

10 And I also checked this with the Turkish Central  
11 Authority, until now in Turkey there is no such procedure.

12 THE COURT: But there's something called a 1980  
13 Child Abduction Country Profile.

14 Are you familiar with that?

15 THE WITNESS: Yes.

16 THE COURT: And at 10.2, now this is Turkey's  
17 response. At 10.2 it said: "In your state, is it possible  
18 for a decision or other determination to be made in  
19 accordance with Article 15 of the convention that removal or  
20 retention of the child is wrongful", and the answer is  
21 "yes".

22 THE WITNESS: Again, this is the Authority's  
23 reply. There's no such court procedure because --

24 THE COURT: So they -- when they filed this reply  
25 they were wrong?

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1 THE WITNESS: No, they were not wrong. The  
2 Central Authority is process with the judges, they are an  
3 alternative consensus of judges, so they will put their  
4 opinion about the Article 15.

5 THE COURT: Who would one make the Article 15  
6 request to?

7 Under Turkish law, you can make the Article 15  
8 request, who would it be made to?

9 THE WITNESS: Again, in order to define the proper  
10 custody right, there should be an evaluation if the party is  
11 entitled to apply.

12 So this evaluation is a matter of control. While  
13 the process the 1980 application, this is not an automatic  
14 process, the Ministry of the Central Authority gets the  
15 file --

16 THE COURT: Right.

17 THE WITNESS: -- they may make habitual residence.

18 THE COURT: Habitual residence.

19 THE WITNESS: And also if the applicant has any  
20 writing from the Hague 1980. That's the application process.  
21 And there are a number of applications are dismissed because  
22 of not complying with the custom and rule. And also this is  
23 on the same web page, joint case declaration to the Hague.

24 Same cite, sorry, different statement.

25 (Continued on the following page.)

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1 (Continuing.)

2 THE COURT: I don't think I understand any of  
3 that. But does anybody else want to make any further  
4 question about that, what I asked the witness?

5 MR. MIN: Your Honor, questions to the witness  
6 or -- because I'd be happy to speak to the Court about  
7 the --

8 THE COURT: No. I mean, if you think the witness  
9 has something to add to it, fine. I raised the issue with  
10 him. I'll give counsel the opportunity to ask a couple of  
11 questions about it.

12 MR. MIN: Sure. Can I do it from here?

13 THE COURT: Yes.

14 REDIRECT EXAMINATION (cont'd)

15 BY MR. MIN:

16 Q In your experience, have you ever seen an Article 15 --

17 A No. In Turkey, there is no Article 15 applications to  
18 date.

19 Q Now --

20 A This is the current information that we got in the  
21 morning from Central Authority.

22 Q You're aware Article 15 of the Hague Convention,  
23 though, right?

24 A Yes.

25 Q And you were aware that in theory and in practice and

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1 depending on which country we're talking about, Article 15  
2 requests can be made to either the Central Authority in that  
3 particular country or to a court in that particular country,  
4 right?

5 A Right.

6 Q Now, your memo that you drafted was specific to the  
7 fact that you don't believe a Turkish court could address  
8 the Article 15 request, right?

9 A Correct.

10 Q What is your opinion on whether or not the Turkish  
11 Central Authority might address the Article 15 request?

12 A First of all, for Turkey, it is under the theory.  
13 However, from professional point of view as a practitioner,  
14 this Article 15 is related to directly filed Hague files.  
15 In U.S., we have this opportunity, but with the files filed  
16 through Central Authority, because this is something needs  
17 to be controlled by the abducting court that if there is any  
18 violation of custody rights. As there is no proper  
19 authority to check it if you file that direct in the U.S.  
20 court, there should be a need of clarification from  
21 authority. That's why Article 15 refers that parties can  
22 ask determination of custody rights.

23 However, for the files coming through Central  
24 Authorities, it has already been reviewed by the judges, it  
25 has already been processed by habitual residents, prevention

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1 of custodial rights, and all possible aspects of the Hague  
2 1980. This is the difference.

3 So in my professional opinion, again, this is  
4 something cases filed directly without Central Authorities  
5 involvement. At the moment for this file, there is a  
6 Department of State and Turkish Minister of Justice  
7 Enrollment. This is a Central Authorities file at the  
8 moment. It's not a civil filing as far as I know. I'm not  
9 here to comment on the U.S. law aspect, of course.

10 So this is related to file, filed directly by the  
11 parties in the foreign court. Otherwise, how come the judge  
12 will understand the correct custody regulations and correct  
13 applicable legal principles? This is my professional  
14 opinion, and in Turkey there's not example of Article 15  
15 process.

16 Q If one were interested in trying to get for the first  
17 time an Article 15 determination from the Turkish Central  
18 Authority, what do you think would be the best process to do  
19 that? Like coming from the Court and the Judge here or in a  
20 court proceeding or judge in the U.S. or --

21 A As per the Hague --

22 Q Or coming from the State Department?

23 A As per Hague 1980, Central Authorities are the  
24 authorized mechanism to run the convention procedures. As a  
25 party country, USA and Turkey needs to cooperate through the

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1 Department of State and Turkish Ministry of Justice. Those  
2 are the Central Authorities as per the convention. So the  
3 process would be done through the authorities --

4 THE COURT: All right. So you've got the Central  
5 Authority. Why can't the Central Authority, in order to  
6 answer the Court's question, refer it to the local court  
7 that's dealing with it to get the answer?

8 THE WITNESS: Again, in order to provide the  
9 answer, there should be an evaluation of entire file. It's  
10 different than common law, Your Honor. We have a civil law,  
11 and within the civil law regulations you see every filing  
12 and its legal ground. For example, custody case, there's a  
13 specific article that regulates that --

14 THE COURT: So you've got all of these decisions,  
15 you know the Court that has reached those decisions.

16 THE WITNESS: It's not like --

17 THE COURT: Why can't the Central Authority put  
18 that question to the Court that issued the decision?

19 THE WITNESS: First of all, there is no regulated  
20 mechanism to transfer it to court and provide an opinion  
21 about it because if it is one of --

22 THE COURT: The second thing here, counsel, it  
23 says: Which authorities in your state can issue Article 15  
24 decisions? It says: The Courts.

25 THE WITNESS: Again, this is never done in Turkey.

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1 It is a very wide answer, and this morning we had a call  
2 with Turkish Central Authority; they don't have any  
3 expertise, any knowledge about this. This is my  
4 professional opinion.

5 THE COURT: Okay.

6 Do you have anything you want to ask on the issue  
7 I raised?

8 MR. WARD: No, Your Honor.

9 THE COURT: Okay. Thank you.

10 You can step down.

11 (Witness is excused.)

12 MR. MIN: Your Honor, can you provide a link or a  
13 site to the country profile response --

14 THE CLERK: It's in the summary judgment opinion.

15 THE COURT: It's in the summary judgment opinion.

16 What is your lineup for tomorrow, counsel?

17 MR. MIN: Sure. We had been talking earlier. I  
18 also invite, and if Mr. Ward doesn't want to do that or is  
19 not suitable, but I know that he originally had witnesses  
20 lined up tomorrow morning remote. If those witnesses are  
21 available another day, then fine. If they have to go  
22 tomorrow morning, we will accommodate.

23 MR. WARD: We'd like you to finish your case.

24 MR. MIN: That's fine. Okay.

25 So then we have three witnesses left. We have a

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1 remote witness at 10 a.m. tomorrow and then we have two  
2 in-person witnesses.

3 THE COURT: Okay. Who is the remote witness?

4 MR. MIN: Talat Yazici, the translator.

5 THE COURT: And then?

6 MR. MIN: We have another expert  
7 translator/interpreter who was here earlier. She'll be back  
8 tomorrow.

9 THE COURT: All right.

10 MR. MIN: And then we have our client.

11 THE COURT: Okay. So you should finish up in the  
12 morning, for sure.

13 MR. MIN: Yeah. And those are all shorter than  
14 the two witnesses today.

15 THE COURT: Okay.

16 And how long do you believe your case will be,  
17 counsel?

18 MR. WARD: Well, Your Honor, and I just want to  
19 let you know that there will be a motion for directive  
20 verdict.

21 But we have a live -- my answer is we have five  
22 witnesses; three live, two remote. The remote we're  
23 planning for tomorrow morning, I have to check with them,  
24 but I will call my witnesses out of order to get live in the  
25 evening, and if we have to get another morning. But I'm



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1 going to really push hard to see even, because we had  
2 someone on at 10:00 tonight, if our experts in Turkey can  
3 testify tomorrow. We're going to push for it, but I don't  
4 know if that's possible.

5 THE COURT: Well, why can't they testify in the  
6 morning? Because I guess you've got your --

7 MR. WARD: Yes.

8 MR. MIN: I mean, listen, I know they want us to  
9 go first, but our experts have gone already, so, like,  
10 whether the translators go I don't think is going to impact  
11 on what their expert said, right?

12 THE COURT: Well, just tell your experts that if  
13 we can finish up tomorrow, they're going to have to get some  
14 sleep tonight, okay? Because we need to wrap this up.

15 MR. WARD: Okay. I understand that, Your Honor, I  
16 do.

17 THE COURT: We can't begin tomorrow morning, I'm  
18 sorry, until 10:00. So we'll begin at 10:00 tomorrow  
19 morning.

20 Okay. Thank you.

21 MR. WARD: Thank you.

22 MR. MIN: Your Honor, can we leave anything here?

23 THE COURT: Is the closet open?

24 THE COURTROOM DEPUTY: Yes.

25 THE COURT: We're not going to be responsible for

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1 your stuff, but you can put it in the closet if you want.

2 MR. MIN: Of course. Understood.

3 THE COURT: We have cleaning people, things like  
4 that. Things can get messed up.

5 MR. MIN: Understood.

6 MR. WARD: I just want everybody to know, while we  
7 were testifying, we got the transcript of the July and we'll  
8 be circulating it momentarily; the July petition.

9 THE COURT: Okay. Thank you. See you later. See  
10 you tomorrow morning.

11 (Matter adjourned until Thursday, December 12,  
12 2024, at 10:00 a.m.)

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